DEPARTMENT OF EDUCATION

34 CFR Parts 668, 674, 675, 676, 682, 685, and 690

RIN 1840–AC20

Student Assistance General Provisions, Federal Perkins Loan Program, Federal Work-Study Programs, Federal Supplemental Educational Opportunity Grant Program, Federal Family Education Loan Programs, William D. Ford Federal Direct Loan Program, and Federal Pell Grant Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the student financial assistance programs authorized under title IV of the Higher Education Act of 1965, as amended (title IV, HEA programs). These programs include the campus-based programs (Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs), the Federal Family Education Loan (FFEL) programs, the William D. Ford Federal Direct Loan (Direct Loan) programs, the Federal Pell Grant Program, and the State Student Incentive Grant (SSIG) program. These amendments, which eliminate unnecessary regulations and improve the existing regulations, are part of a planned series of regulatory reform and relief measures for the title IV, HEA programs. The Secretary is making these changes in response to the President's Regulatory Reform Initiative.

The title IV, HEA programs support the National Education Goals by enhancing opportunities for postsecondary education. The National Education Goals call for increasing the rate at which students graduate from high school and pursue high quality postsecondary education, and for supporting life-long learning.

EFFECTIVE DATE: These regulations take effect on July 1, 1996.

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SUPPLEMENTARY INFORMATION: On March 4, 1995, the President directed every Federal agency to review its rules and procedures to reduce regulatory and paperwork burden, and directed Federal agencies to eliminate or revise those regulations that are outdated or otherwise in need of reform. Responding to the President's Regulatory Reform Initiative, the Secretary announced plans to eliminate or revise 93 percent of the Department's regulations. To launch the Department's reinvention effort, the Secretary published a notice in the May 23, 1995 Federal Register (60 FR 27223–27226) eliminating more than 30 percent of the Department's regulations, primarily in areas not related to student financial assistance.

The Secretary is conducting a page-by-page review of all student financial assistance regulations to identify those that should be eliminated or improved. The Secretary is also considering developing proposals for statutory amendments to eliminate unnecessary administrative burden.

As part of his response to the President's regulatory reinvention initiative, on September 21, 1995 the Secretary published a Notice of Proposed Rulemaking (NPRM) for parts 668, 674, 675, 676, 682, 685, and 690 in the Federal Register (60 FR 49114). The NPRM included a discussion of the proposed changes that will not be repeated here. The following list summarizes those changes and identifies the pages of the preamble to the NPRM on which the discussion can be found.

Part 668—Student Assistance General Provisions

Subpart A—General

The Secretary proposed to remove and reserve § 668.7 ''Student Eligibility,'' and move the ''eligible student'' provisions to a revised subpart C of 34 CFR 668 (page 49114).

Subpart B—Standards for Participation in Title IV, HEA Programs

The Secretary proposed to allow institutions to obtain information from the National Student Loan Data System (NSLDS) that would otherwise be found on a financial aid transcript, once the Secretary publishes a notice in the Federal Register informing institutions that the NSLDS can be used to satisfy this purpose (pages 49114–49115).

Subpart C—Student Eligibility

The Secretary proposed to expand the data match with the Social Security Administration (SSA), starting in the 1996–97 award year, in order to confirm claims of U.S. citizenship by applicants for title IV, HEA program assistance on the Free Application for Federal Student Aid (FAFSA) (page 49115).

The Secretary proposed to allow students to satisfy the requirement of filing a Statement of Educational Purpose with the institution by completing the FAFSA, which will include this statement starting with the 1996–97 award year.The Secretary's proposal did not affect current FFEL requirements with regard to this statement on loan applications (page 49115).

The Secretary proposed to eliminate the model Statement of Educational Purpose. A model statement would be duplicative because the statement will appear on the FAFSA (page 49115). The Secretary proposed to eliminate the Statement of Registration Status. A male student's Selective Service registration status is now confirmed through a data match with the Selective Service System. This data match eliminates the need for the collection of a separate statement (page 49115).

The Secretary proposed to amend and reorganize the provisions under which a student who owes a debt under the HEA or to the United States may nevertheless be eligible to receive title IV, HEA program assistance. The Secretary also proposed to conform the regulations to existing statutory requirements pertaining to bankruptcy (pages 49115–49116).

Subpart I—Immigration Status Confirmation

The Secretary proposed to amend § 668.133(b) to remove the requirements for requesting secondary confirmation from the Immigration and Naturalization Service for a student if (1) the student presents documents to his or her institution verifying his or her immigration status that are identical to documents presented to that institution in a previous year, (2) that institution determined the student to be an eligible noncitizen using secondary confirmation of those same documents in a previous award year, and (3) the institution does not have conflicting information or reason to doubt the student's claim of eligible noncitizen status (page 49116).

Subpart K—Cash Management

The Secretary proposed to amend § 668.164(a)(2) to eliminate the UCC–1 filing requirement for institutions that (1) disclose clearly in the name of the account in which Federal funds are deposited that Federal funds are maintained in that account, or (2) are backed by the full faith and credit of a State (page 49116).

The Secretary proposed to modify § 668.165(b)(1) to provide an institution with as much flexibility as possible with respect to how it notifies a student or parent borrower that FFEL or Direct Loan program funds have been credited to the student's account. That flexibility allows an institution to provide notification electronically or through the use of telecommunication devices (page 49116).

The Secretary proposed to amend § 668.165(b)(1) and (3) to provide that under certain circumstances, and with the student's permission, an institution may use current year title IV, HEA program funds to pay for minor charges from a prior year (pages 49116–49117).

Parts 674, 675, and 676—Campus-Based Programs

The Secretary proposed to eliminate the duplicative definitions of ''full-time graduate or professional student'' and ''full-time undergraduate student from §§ 674.2(b), 675.2(b), and 676.2(b), as applicable, and instead incorporate the definition of ''full-time student'' set forth in § 668.2(b) for all three of the campus-based programs (page 49117).

The Secretary proposed to eliminate the provisions of §§ 674.17(a), 675.17, and 676.17 which provide that title IV, HEA program funds are held in trust for the Secretary and intended student beneficiaries and cannot be used or hypothecated for any other purpose, because these very provisions are included in § 668.161(b) of the Student Assistance General Provisions regulations (page 49117).

The Secretary proposed to amend §§ 674.19(e)(4)(v), 675.19(c)(3), and 676.19(c)(3) to allow institutions the additional flexibility of using optical disk technology in complying with record retention requirements (page 49117).

Part 674—Federal Perkins Loan Program

The Secretary proposed to amend the definition of ''making of a loan'' under § 674.2(b) by removing the reference to a borrower signing for each advance of funds (page 49117).

The Secretary proposed to eliminate the requirement under § 674.16 that a student sign for each loan advance, and require instead that the institution simply must obtain the borrower's signature on a promissory note for each award year before it disburses any loan funds under that promissory note for that award year (page 49117).

The Secretary proposed to amend § 674.31(a) to indicate that the Secretary will provide sample promissory notes to institutions, and that institutions may add items to the sample notes so long as the new items do not alter the substance of these sample notes (page 49117).

The Secretary proposed to amend § 674.33(a)(2) by allowing institutions to combine the last scheduled Federal Perkins loan payment with the next-to-the-last payment if the last payment is $25 or less (page 49117).

The Secretary proposed to amend § 674.47(g) to allow an institution to cease collection activity on a defaulted account with a balance of less than $25, while continuing to require the institution to consider the loan as in default for purposes of calculating its cohort default rate. The Secretary further proposed to amend § 674.47 by adding a new paragraph (h) to allow institutions to cease collection activity and write off loan accounts with a balance of less than $1, including outstanding principal, accrued interest, collection costs, and late fees (pages 49117–49118).

Part 675—Federal Work-Study Programs

Appendix B—Model Off-Campus Agreement

The Secretary proposed to eliminate this sample agreement as an appendix to the FWS regulations. The Secretary will include a model off-campus agreement in the Federal Student Financial Aid Handbook (page 49118).

Parts 682 and 685—Federal Family Education Loan Program and Direct Loan Program

The Secretary proposed to expand the pool of borrowers under §§ 682.201 and 685.200 of the Federal PLUS and Federal Direct PLUS programs, respectively, to include the spouse of a student's parent if that parent remarried (page 47118).

The Secretary proposed to eliminate § 682.600 (a) through (c) because they duplicate provisions in 34 CFR part 600 or 668. The provisions of § 682.600(d) that deal with foreign schools, however, are necessary and the Secretary proposed to include those provisions in a new section, § 682.611 (page 49118).

The Secretary proposed to eliminate the provisions contained in § 682.602 that deal with students enrolled in correspondence programs, because those students are not eligible to receive FFEL program funds unless they are enrolled in a program that leads to an associate, bachelor's, or graduate degree (page 49118).

Part 690—Federal Pell Grant Program

Subpart A—Scope, Purpose and General Definitions

The Secretary proposed to revise § 690.7 by deleting paragraph (a)(1) because the provisions contained in that paragraph duplicate provisions in 34 CFR part 600 or 668 (page 49118).

Subpart G—Administration of Grants Payments

The Secretary proposed to eliminate the last sentence in §§ 690.71, 690.72, 690.73, and 690.74, respectively, because they duplicate provisions contained in 34 CFR part 668 (page 49118).

The Secretary proposed to revise § 690.83 by consolidating in one paragraph the procedures that allow institutions to receive payment or credit for Federal Pell Grants they previously disbursed if that situation is disclosed by an initial audit or program review (page 49118).

Substantive Changes to the NPRM

The following discussion reflects substantive changes made to the NPRM in the final regulations. The provisions are discussed in the order in which they appear in the proposed rules.

Student Assistance General Provisions

Subpart C—Student Eligibility

The proposed subpart C is further reorganized to clarify the difference between what the general provisions for student eligibility are, and how each of

those elements of student eligibility are established.

Subpart I—Immigration-Status Confirmation

Section 668.133 Conditions Under Which an Institution Shall Require Documentation and Request Secondary Confirmation

Currently, in the absence of a data match with the Immigration and Naturalization Service (INS) confirming a student as an eligible noncitizen, institutions are required to use the secondary confirmation process to determine if a student is an eligible noncitizen in accordance with section 484(a)(5) of the HEA. Secondary confirmation requires institutions to mail requests for immigration status information to the INS and to use INS responses (also by mail) in determining the student's noncitizen eligibility. This determination has been required for each award year that the student applies for title IV, HEA assistance. The NPRM proposed to delete secondary confirmation requirements, in most cases, if the student produces immigration status documents that are identical to documents received by the institution in a previous award year. In response to comments received, this section is further revised to eliminate the need for the student to produce immigration status documents in subsequent award years if the documents previously submitted by the student remain valid.

Subpart K—Cash Management

Section 668.163 Requesting Funds

The Secretary amends this section to require that for any request for cash, an institution must identify the title IV, HEA program under which it requests funds by its Catalog of Federal Domestic Assistance (CFDA) number and the total amount of funds for each CFDA number included in that request.

Section 668.164 Maintaining Funds

In response to public comment, this section is revised to exclude all public institutions from the UCC–1 filing requirement.

Section 668.165 Disbursing Funds

In response to public comment, this section is revised to clarify that if an institution provides an electronic notice to a student or parent that title IV, HEA loan program funds were credited to the student's account, it must request confirmation from the student or parent of the receipt of that notice and maintain a record of that confirmation. In addition, this section is revised to provide that an institution may consider prior-year charges that do not exceed $100 to be minor charges.

Federal Perkins Loan Program

Section 674.5 Definitions

The definition of ''satisfactory arrangements to repay the loan'' for purposes of the Federal Perkins Loan Program will be amended to include those loans that are ''paid in full.'' This change allows an institution to exclude a defaulted loan that has been paid in full from the institution's cohort default rate.

Section 674.31 Promissory Note

The proposal to provide ''sample'' Federal Perkins loan promissory notes to participating institutions has been removed. A national promissory note will be maintained for the Federal Perkins Loan Program. Institutions may make only nonsubstantive changes to these notes.

Section 674.47 Costs Chargeable to the Fund

The September 21, 1995 NPRM offered a proposal to allow an institution to cease collection activity on a defaulted account with a balance of less than $25. In an effort to reduce administrative burden on institutions that are handling defaulted accounts with balances larger than $25, the cessation of collection activity provision has been modified. Institutions will be allowed to cease collection activity on a defaulted account with a balance of less than $200, if all due diligence has been performed in attempting to collect the defaulted account and there has not been any activity on the account for at least four years.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 74 parties submitted comments on the proposed reform and relief regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows. Major issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under applicable statutory authority—are not addressed.

Comments and Responses

Regulatory Reform and Relief Effort

Comments: Numerous commenters indicated support for the Secretary's efforts to eliminate unnecessary regulations and to improve the existing regulations. However, some commenters stated that more needs to be done to streamline the regulations for the title IV, HEA programs.

Discussion: The Secretary is encouraged by the expression of support from the public for the reform and relief regulation activities that are part of the Department's reinvention effort. The Secretary realizes that additional amendments to the regulations for the title IV, HEA programs are possible. The amendments in this regulatory package represent only one part of a planned series of regulatory reform and relief amendments for the student financial assistance regulations. The Secretary restates his plans to propose additional reform and relief regulatory changes for the title IV, HEA programs in the upcoming months.

Changes: None.

Part 668—Student Assistance General Provisions

Subpart B—Standards for Participation in Title IV, HEA Programs

Section 668.19 Financial Aid Transcript

Comments: Most commenters supported the Secretary's proposal to allow use of the National Student Loan Data System (NSLDS) in lieu of the financial aid transcript when the NSLDS becomes operational. A few commenters were concerned about the accuracy of the NSLDS and urged the Secretary to fully test the system before requiring its use and suggested the National Student Loan Clearinghouse as an acceptable alternative while the testing takes place. One commenter requested sufficient notice before the NSLDS is placed into operation to allow institutions with limited computer resources to obtain the necessary equipment and expertise. One commenter questioned the frequency with which the Secretary would require institutions to access the NSLDS, and expressed concern that NSLDS inquiries would be required at the time of each disbursement. Several commenters suggested that the terms ''loan period or period of enrollment for which the loan is made'' be used in lieu of ''award year'' as it pertains to FFEL and Direct Loans because annual loan limits are not based on award years. They also suggested that annual loan limits could be affected by loans made in the preceding award year, and that the financial aid transcripts should include this information. One commenter was concerned about obtaining information from institutions that are unable to use, or fail to meet requirements for providing information to, the NSLDS. One commenter asked whether an

institution could assume, if the NSLDS contains no financial data on a particular student, that the student did not receive aid from any previously-attended institution, or if no data appears for a given institution, that the student did not receive aid from that particular institution. One commenter inquired as to whether the NSLDS will provide data regarding the student's receipt of title IV, HEA assistance at a closed institution, and whether the NSLDS will provide notice that the institution is closed. One commenter expressed concern that institutions would not be able to ascertain from the NSLDS that a student transferred during the current award year. One commenter questioned why paragraph (a)(3) continues to address the withholding or limited disbursement of title IV, HEA assistance pending receipt of financial aid transcripts, but does not address those issues for the NSLDS, and whether the Secretary intends to provide for limited disbursements in the event the NSLDS becomes temporarily inoperative. The same commenter suggested that the Secretary provide regulatory instructions with regard to how the institution should proceed when NSLDS data conflicts with other information available to the institution.

Discussion: With regard to the concerns expressed about the accuracy of NSLDS data, the Secretary notes that the NSLDS underwent extensive testing of its executable programs and support functions and successfully passed those initial test reviews prior to becoming operational in November, 1994. The National Student Loan Clearinghouse would not be an acceptable alternative because it serves only a few of the institutions currently participating in title IV, HEA programs, and because it contains information pertaining to students who are not title IV, HEA recipients in addition to those who are. The Clearinghouse also does not include any financial aid history information but only enrollment data.

With regard to the concern about limited computing resources at some institutions, the Secretary specifically designed the NSLDS to require minimal computer equipment. The NSLDS can be accessed using a personal computer with 486 megahertz of processing power, eight megabytes of random access memory, and 50 megabytes of hard disk storage space. In addition, the NSLDS will be available as an alternative to, not as a replacement for, the paper financial aid transcript, so that institutions with insufficient computer equipment can continue to use the paper financial aid transcript. An institution receiving a paper financial aid transcript request will continue to be required to complete and return it to the requesting institution, in accordance with 34 CFR 668.19.

With regard to the comment concerning required frequency of access, the Secretary has taken steps to include NSLDS financial aid history information in the Student Aid Report/ Institutional Student Information Record (SAR/ISIR). The SAR/ISIR will, at a minimum, inform the institution as to whether the student previously received title IV, HEA financial aid. If there is no financial aid history, the institution will not be required to obtain a financial aid transcript or access the NSLDS since it can be assumed that the student either did not attend another school or attended but did not receive any title IV aid. With regard to the comments that suggested that the proposed financial aid transcript does not provide the necessary information on FFEL loan history to compute annual loan limits, the Secretary agrees with these commenters' concerns and will reinstate provisions requiring inclusion of ''period of enrollment'' or ''loan period'' and loans made in preceding award years under the FFEL as well as the Direct Loan programs. With regard to the concern about institutions who are unable to use, or fail to meet requirements for providing information to, the NSLDS, the Secretary assures the commenter that complete guidance to institutions will be provided in using the NSLDS, and that compliance with regular reporting requirements will be monitored and enforced. With regard to closed institutions, the NSLDS contains the cumulative loan history of title IV, HEA aid recipients, including aid awarded at institutions that are closed at the time of inquiry. The NSLDS will not, however, provide specific notification that any particular institution has closed. With regard to the concern about whether institutions will be able to determine from the NSLDS that a student has transferred during the current award year, the Secretary assures the commenter that the NSLDS will receive information on current year awards from guaranty agencies, the Direct Loan servicers, and from institutions. However, the Secretary notes that the flexible reporting requirements of data providers does present a problem with so called ''mid-year transfers'' and is committed to keeping any burden related to the accessing of financial aid history for such students to a minimum. With regard to the applicability of the withholding and limited disbursement provisions to the NSLDS, the Secretary believes that the provisions of § 668.19 are applicable only to the paper financial aid transcript process. If the NSLDS becomes temporarily inoperative, the paper financial aid transcript process could be used and these provisions would apply. However, the Secretary believes that any such ''downtime'' of the NSLDS would be brief and encourages institutions to re-query the NSLDS as soon as it is available. If NSLDS data conflicts with other information available to the institution, the conflict must be resolved before any title IV, HEA disbursement can be made.

Changes: Paragraph (c) is revised to provide that a financial aid transcript must include the loan period covered by each loan made under the FFEL and Direct Loan programs, and the loan history must also include information concerning loans made in preceding award years. Paragraph (a)(2)(ii) is revised to clarify that in a Federal Register Notice, the Secretary will inform institutions both when, and under what conditions, the NSLDS may be used.

Subpart C—Student Eligibility

Comments: Many commenters expressed support for the proposal to move the student eligibility regulations to subpart C.

Discussion: The Secretary appreciates the favorable comments received regarding the reorganization of the student eligibility provisions. After further examination, the Secretary believes that additional refinements are warranted to minimize any confusion that may be caused by the proposed organization. In particular, the Secretary believes that the basic requirements for establishing a student's eligibility for title IV, HEA assistance (formerly § 668.7(a)) should be clearly separated from requirements placed on institutions (formerly § 668.7(b)) for assessing the student's compliance with these requirements.

Changes: The Secretary has made technical revisions that establish a general student eligibility section, followed by sections addressing, in detail, how each of the elements of student eligibility are established.

Section 668.32 Student Eligibility—General (Section 668.33 in NPRM)

Compulsory School Attendance

Comments: Several commenters noted that the Secretary has removed provisions requiring students to be above the age of compulsory school attendance to be eligible for title IV, HEA assistance. One commenter

questioned the wisdom of allowing very young students to borrow these funds. Another commenter expressed concern that the removal of these provisions would increase the potential of abuse in the use of title IV, HEA funds.

Discussion: In proposing this deletion of regulatory language, the Secretary had no intention of removing the policy regarding compulsory school attendance. Since the definitions of ''institution of higher education'' in § 600.4 and ''proprietary institution of higher education'' in § 600.5 include provisions containing this requirement, the Secretary believes there is no reason to duplicate the requirement in the student eligibility regulations.

Changes: None.

Statement of Educational Purpose

Comments: Most commenters supported the Secretary's proposal to provide a Statement of Educational Purpose on the Free Application for Student Aid (FAFSA) that satisfies § 668.33(e) requirements for filing the Statement of Educational Purpose. One commenter suggested that the regulations specifically authorize use of the FAFSA in this manner.

Discussion: The Secretary prefers to use non-specific regulatory language to minimize the potential of redrafting regulations each time the application delivery system changes.

Changes: None.

Section 668.33 Citizenship/Residency Requirements U.S. Citizenship Match

Comments: Several commenters expressed support for the proposed enhancement of the existing social security match to include matching on U.S. citizenship data. They predicted that this enhancement would improve the integrity of the title IV, HEA application process by making it more difficult to avoid checking eligibility status with the INS. Other commenters, however, expressed concern that the proposed enhancement represents an additional unjustified burden caused by the need to collect evidence of U.S. citizenship. These commenters suggested that the Secretary should provide data to support the claim that misreporting of U.S. citizenship is a significant problem. If misreporting exists, one commenter questioned whether detection of a few such cases justifies the additional burden that would be imposed on the many applicants who complete this item truthfully. Another commenter questioned the accuracy of the Social Security Administration (SSA) data to be used for this matching program in light of information received by the commenter that citizenship data has only been collected by SSA since the early 1980's. Several commenters expressed concern that a student's U.S. citizenship status that was not confirmed would also prevent or delay that student from receiving confirmation of the accuracy of the student's social security number, or that such interference could also occur in reverse order.

Discussion: The Secretary disagrees with the comments portraying the U.S. citizenship match as an unjustified burden. On September 9, 1994, the Department's Office of Inspector General issued an audit report indicating that, during the 1992–1993 award year, 45,000 Federal Pell Grant awards were made to students claiming U.S. citizenship on their applications for federal student assistance who were not confirmed as U.S. citizens by the Social Security Administration (SSA). Since SSA records do not contain alien registration numbers, it is virtually impossible to track the status of these 45,000 individuals to determine whether they were naturalized citizens or eligible noncitizens at the time they applied. However, if even only 10% of the 45,000 applications were completed by ineligible aliens, the savings more than offset the expense of matching, and will provide additional grant funds for eligible students. The Secretary disagrees with the commenters who are concerned about additional burden being placed on students who will be required to provide evidence of U.S. citizenship. The vast majority of students will be confirmed by SSA as U.S. citizens, and no further action will be required. Many noncitizens who falsely claim U.S. citizenship will provide alien registration numbers, and their applications will be processed using the INS data match in the same manner as other noncitizen applications. Undocumented illegal aliens will tend to drop out of the application process without burden to the institution. For the most part, the Secretary believes that only naturalized citizens who have not kept their records updated with SSA are likely to be affected by this new requirement. With regard to the commenter's concern that SSA has only collected citizenship data since the early 1980's, the Secretary confirms this fact. However, SSA has collected ''place of birth'' data for many years, and the match will access both ''place of birth'' and ''citizenship'' data elements before issuing match results. With regard to concerns about delays and other impacts of U.S. citizenship matching on social security number matching, the Secretary wishes to assure the commenter that there will be no impact of one match on the other. Social security numbers and U.S. citizenship status are generated from separate data fields within the SSA data base, and will generate separate messages.

Changes: None.

Section 668.35 Student Debts Under the HEA and to the U.S. (Section 668.34 in NPRM)

Comments: One commenter suggested that the Secretary reverse the order of proposed paragraphs (b)(2)(i) and (b)(2)(ii) to prevent the possibility of a student making six consecutive monthly payments on a defaulted loan before approaching a lender to make satisfactory repayment arrangements. Another commenter noted that the definition of ''satisfactory repayment arrangement'' in § 682.200 already provides for six consecutive monthly payments, and that the language proposed in paragraph (b)(2) could be interpreted as requiring twelve consecutive monthly payments. One commenter suggested that proposed paragraph (d)(1)(ii) be revised to include the phrase ''satisfactory to the holder'' instead of ''satisfactory to the institution,'' which the commenter believes is inappropriate for the FFEL and Direct Loan programs. Several commenters urged the Secretary to reinstate references in proposed paragraph (d)(2) to the specific title IV, HEA programs for which overpayments are applicable, asserting that such a correction would alleviate confusion concerning the relevance of overpayments to the FFEL and William D. Ford Federal Direct Loan programs.

Discussion: The Secretary agrees with the commenters' concerns with regard to the order of proposed paragraphs (b)(2)(i) and (b)(2)(ii). Although the phrase ''makes arrangements, satisfactory to the holder'' used in this paragraph is not identical to the phrases used in the individual title IV, HEA loan programs, the Secretary emphasizes that those specific provisions that govern how a defaulted borrower can regain eligibility are found in the individual title IV, HEA loan program regulations. The Secretary also agrees with the comment suggesting that proposed paragraph (d)(1)(ii) be revised to require a student who has received a grant or loan overpayment to make arrangements, satisfactory to the holder of the overpayment debt, to pay the overpayment. With regard to the comment requesting reinstatement in proposed paragraph (d)(2) of the specific programs for which overpayments are applicable, the Secretary agrees and has

included specific references to the Federal Perkins Loan Program to eliminate any confusion.

Changes: The Secretary reverses the order of proposed paragraphs (b)(2)(i) and (b)(2)(ii) and revises proposed paragraph (b)(2)(i) to clarify that the six consecutive monthly payments are to be incorporated as part of satisfactory arrangements to repay the loan balance, and that those arrangements are to be made in accordance with the individual title IV, HEA loan program. Proposed paragraph (d)(1)(ii) is revised to clarify that a student who receives a grant or Federal Perkins loan overpayment is to make arrangements, satisfactory to the holder of the overpayment debt, to repay the overpayment.

Section 668.36 Social Security Number Verification (Section 668.33 NPRM)

Comments: One commenter supported the change to proposed § 668.33(d)(3)(iii) which clarifies that the student bears primary responsibility for reporting corrected social security numbers to the Secretary. In addition, the commenter also expressed support for the change to proposed § 668.33(d)(4), which relaxes the prohibition from disbursing or certifying aid if the student fails to meet the institution's deadline for submission of a correct social security number. The commenter suggested that the Secretary provide similar ''waiver'' authority to institutions in regulations governing the other data matches.

Discussion: As explained in the discussion regarding the selective service match, the Secretary is amending regulatory sections governing data matches to consistently implement provisions of the Computer Matching and Privacy Protection Act of 1988. In particular, the revised provisions will clarify the Secretary's policy with respect to the 30-day due process standard and the setting of deadlines by institutions for students submitting documents in order to contest match results.

Changes: Proposed paragraph (b)(2) is revised to provide that the institution must give a student at least 30 days from the date the institution is notified of the results of the data match, or until the end of the award year, whichever is later, to produce evidence of an accurate social security number.

Section 668.37 Selective Service Registration (Sections 668.33(b) and 668.36 in NPRM)

Statement of Registration Status

Comments: One commenter requested a clarification concerning whether the Statement of Registration Status may be necessary if the Selective Service data match does not confirm the student's status, or if some other statement is required. Two commenters suggested that proposed § 668.33(b)(1) be corrected to remove the unintended requirement that a student must provide evidence of exemption from the selective service registration requirement when the student's output document already confirms the student's exemption status. Another commenter requested that the model Statement of Registration Status be retained as an efficient way of collecting information concerning a student's exemption from selective service registration.

Discussion: The Secretary envisions no circumstances in which the Statement of Registration Status would continue to be required. If the student's claim to have registered with Selective Service is not confirmed by the Selective Service data match, the student bears responsibility for submitting evidence to the institution that he registered, or is exempt from registration. The institution may consult the *Federal Student Financial Aid Handbook* to determine if this evidence is valid, or it may require the student to obtain a Status Information Letter from Selective Service to further clarify the student's status. Instructions for interpreting Status Information Letters are also available in the Handbook. Given the thorough procedures in place for verifying evidence of registration or exemption, the Secretary does not wish to retain vestiges of an earlier system based primarily on self-certification, and would prefer to completely eliminate the Statement of Registration Status. The Secretary finds little validity to the commenter's concern that the regulations would require students, confirmed as exempt from registration requirements by the data match, to nevertheless provide evidence of exemption. The data match is designed to automatically screen out certain applicants who are clearly exempt from these requirements. An output document containing a message attesting to the applicant's exemption is quite sufficient to establish that ''the student is not, or was not required to be, registered with Selective Service,'' as provided in proposed § 668.33(b)(2)(i).

Changes: None.

Selective Service Data Match

Comments: One commenter noted that the Secretary has changed proposed paragraph (b)(2) with regard to the time period for providing documentation of Selective Service registration status. As currently worded, the student has 30 days from the date the institution is notified of the results of the data match or the end of the award year, whichever is later, to provide such documentation. The commenter noted that this language differs from § 668.33(b)(2), which does not provide the ''end of the award year'' option.

Discussion: In practice, the ''end of the award year'' option is not new. The institution can set its deadline for receiving documentation of Selective Service registration status on any date, as long as it allows the student the statutorily-required minimum of 30 days to produce the documents. By rephrasing the requirement in this manner, the Secretary is clarifying that institutions need not impose arbitrary deadlines that prevent the student from establishing eligibility later in the award year and receiving title IV, HEA assistance for that award year, if the institution's overall policy would not normally set such deadlines for all students. The Secretary is aware that the phrasing of this requirement is inconsistent among the various regulatory provisions governing the data matches, and will revise all applicable sections to resolve this inconsistency.

Changes: The Secretary is revising sections that govern data matches to include the requirement that the student must provide evidence of his or her eligibility, within 30 days from the date the institution is notified of the results of the data match, or until the end of the award year, whichever is later.

Subpart I—Immigration Status Confirmation

Section 668.133 Conditions Under Which an Institution Shall Require Documentation and Request Secondary Confirmation

Comments: Many commenters supported the Secretary's proposal to limit secondary confirmation requirements. Many also suggested that the Secretary should take the additional step of waiving collection of immigration status documents if the documents collected in a previous award year remain valid.

Discussion: The Secretary agrees with commenters who questioned the need for students to present immigration status documents in subsequent award years if they had been confirmed as eligible noncitizens in a previous award year. The Secretary cautions institutions, however, that some eligible noncitizen statuses are subject to expiration and that institutions should consult the student's file from that previous award year to determine if the

student's immigration status remains valid.

Changes: Section 668.133(b) is revised to delete the provision requiring a student to present evidence of immigration status in years subsequent to an award year in which secondary confirmation with INS was used to confirm the student's eligible noncitizen status.

Subpart K—Cash Management

Section 668.163 Requesting Funds

Comments: None. Proposed rulemaking waived under 5 U.S.C. 553 (b)(A).

Discussion: The Secretary amends § 668.163, which describes the procedures under which institutions request and receive title IV, HEA program funds The amendment requires an institution to include in any request for cash (1) the Catalog of Federal Domestic Assistance (CFDA) number identifying the source of program funds, and (2) the amount of funds for each CFDA number included in that request. Under current practice, an institution reports its expenditure of title IV, HEA funds, by program, on a quarterly basis. However, to monitor the expenditure of Federal appropriations, the Department of the Treasury and the Office of Management and Budget require the Department of Education to report on a monthly basis the amount and source of program funds provided to participating institutions. Obviously, the Secretary cannot provide to Treasury and OMB an accurate and timely report of the Department's use of appropriated funds, unless institutions identify the title IV, HEA funds by program and amount when those funds are requested.

The Secretary will use the information provided by this new report format not only to give more timely reports of amounts provided to institutions, but will consider whether this information can be used to reduce the number of expenditure reports institutions would otherwise be required to make. Moreover, this minor procedural change poses almost no additional burden on institutions.

In accordance with this subpart and the procedures contained in the *Recipients Guide for the Department of Education Payment Management System,* under the advance payment method, an institution must first determine its immediate disbursement needs before submitting a request for cash; under the reimbursement payment method, an institution requests funds for specific students whom the institution demonstrates to the satisfaction of the Secretary are eligible to receive the requested amount of program funds. In either case, the institution will know both the program for which it seeks funds and the amount needed to make disbursements to students. This change merely requires the institution to disclose that information on a standardized form.

Changes: Section 668.163(a)(2) and (3) are amended to require that in any request for cash, an institution must identify the title IV, HEA program under which the institution requests funds by its appropriate Catalog of Federal Domestic Assistance (CFDA) number and the total amount of program funds for each CFDA number included in the request.

Section 668.164 Maintaining Funds

Comments Regarding UCC–1 Filings

Comments: Most of the commenters agreed with the proposal to eliminate the UCC–1 filing requirement for institutions that are backed by the full faith and credit of a State, and for bank accounts that do not contain the phrase ''Federal funds'' in their name.

One commenter writing on behalf of business officers opined that the term ''backed by the full faith and credit of the State'' is a poor designator of institutional control, estimating that about one-half of all public institutions would not meet this requirement due to the diversity of governing arrangements for State-supported institutions. According to the commenter, these State-supported institutions pose no greater risk to Federal funds than other public institutions that technically satisfy the proposed requirement. One other commenter echoed these sentiments, adding that a UCC–1 filing is not appropriate for government agencies. Another commenter expressed concern that many State auditors and offices of general counsel are interpreting the phrase ''backed by the full faith and credit of the State'' quite literally and concluding that it does not apply to State schools. All of these commenters recommend that the Secretary modify the proposed requirement to exempt all public institutions from having to file UCC–1 statements.

One commenter writing on behalf of business officers stated that a UCC–1 filing is unnecessary for any institution because institutions are otherwise required to provide written notification to their bank of the accounts that contain Federal funds.

Discussion: The commenters have convinced the Secretary that for the purpose of protecting Federal funds, a UCC–1 filing is not necessary for public institutions, regardless of whether these institutions are backed by the full faith and credit of the State.

The Secretary disagrees with the commenter that written notification to the bank in which the account is maintained provides sufficient protection of Federal funds. The abuse cited by the Secretary in the final regulations for the cash management regulations (see, 59 FR 61724), that certain institutions have used or misrepresented Federal funds to obtain a loan or secure credit, may continue to occur where an institution seeks to obtain a loan or credit from a bank other than the bank to which it provided written notification. It is this situation where a UCC–1 filing provides an additional safeguard because it serves to alert other banks or potential creditors that the institution's account contains Federal funds.

Changes: Section 668.164(a)(2) is revised to exempt all public institutions from filing a UCC–1 statement.

Section 668.165 Disbursing Funds

Comments Regarding Electronic Notification of Student and Parent Borrowers

Comments: Most commenters supported the proposal under which an institution could notify a student or parent borrower that his or her account was credited with Direct Loan or FFEL Program funds electronically or through the use of telecommunications devices. Two commenters contended that the ''return receipt'' requirement for documenting notifications transmitted via electronic mail (e-mail), as discussed in the preamble to the proposed rules, departs from and exceeds the documentation requirements for written notifications delivered by regular mail. The commenters saw no reason why a return receipt should be required for e-mail transmissions when no corresponding proof of delivery is required for notifications sent by regular mail.

For the following reasons, one commenter writing on behalf of a student legal services organization strongly urged the Secretary to delete the proposed electronic notification provisions. First, the commenter contended that electronic notification would allow schools short on time or resources to cut corners on notice to students, thereby diminishing a borrower's rights. At worst, it would open the door to abuse by unscrupulous schools or individuals who want to minimize borrower knowledge about his or her control over loan funds. Given the increasing use of electronic funds

transfers (EFT), the commenter contended that students have lost their key means of control over loan proceeds, *i.e.*, their power to refuse to endorse the loan check. Amplifying this point, the commenter asserted that when the EFT process is used, timely, clear notice that the loan proceeds have been credited to the student's account is the equivalent of requesting a check endorsement—it triggers the student's ability to refuse the loan in whole or part. Thus, the commenter concluded that adequate, verifiable notice of receipt of loan proceeds has serious legal and financial implications for borrowers. Moreover, the commenter implied that adequate and verifiable notice is notably absent in the proposed rules, despite the preamble explanation that the Secretary expects schools to ''have a means of documenting that the student or parent received this information.'' According to the commenter, the reality is that schools will use, or purport to use, telephone or in-person conversations as the means of notification and document that notification with notes to a borrower's file. Armed with only notes of such alleged contacts, the Secretary would be hard pressed to prove violations of the disclosure rule. The commenter concluded by saying the minimal requirement that schools notify a student in witting that his or her account has been credited—implicit notice that the borrower's legal liability for loan has begun—should not be abandoned.

Discussion: The Secretary disagrees that requiring a ''return receipt'' for e-mail transmissions expands any documentation requirements. In fact, the Secretary believes the opposite is true.

As a general rule, in the absence of any documentation specified by the Secretary to satisfy a particular requirement, an institution must be able to document that it satisfied that requirement. Thus, the Secretary believes that the burden and cost of documenting that a written notification was mailed to a student far exceed the burden and cost of a receipted e-mail notification.

With regard to whether e-mail should be subject to a return receipt requirement because there is no corresponding proof of delivery for notices sent by regular mail, the Secretary notes that the courts have developed a presumption that mail deposited with the U.S. Postal Service is actually received (*See, Cook* v. *Providence Hospital,* 820 F.2d 176,n.3 (6th Cir. 1987); and *McPartlin* v. *Commissioner,* 653 F.2d 1185, 1191 (7th Cir. 1981)). The same presumption does not apply to e-mail messages.

In response to the comment by student legal services, the Secretary disagrees that the proposed change minimizes borrower rights. Rather, in recognition of the less burdensome and more cost effective methods afforded by electronic technologies, the Secretary sought only to expand the means by which an institution may notify a student or parent. That the notice may now be provided by additional, equivalent means has no bearing on borrower rights.

The purpose of the notice, whether that notice is provided in writing or electronically, is to remind students of their loan obligation and to give students the opportunity to replace credited loan proceeds with other funds thereby reducing their loan when an institution return the loan proceeds. The Secretary wishes to make clear that an institution cannot be compelled to return loan proceeds that were properly disbursed or delivered to the student solely at the request of a student.

On the other hand, the Secretary agrees that telephonic and in-person conversations are not adequate and verifiable methods of providing notice.

The Secretary did not propose that this requirement apply to Federal Perkins Loan Program funds because under that program the student had to sign for each loan advance. However, since the Secretary has decided to eliminate this Federal Perkins Loan Program requirement, this section is amended to provide that an institution must also notify a borrower that his or her account was credited with Federal Perkins loan funds.

Changes: Section 668.165(b)(1) is amended to clarify that an electronic notice must be the equivalent of a written notice by incorporating the NPRM preamble statement that if an institution notifies a student or parent electronically, it must request a return receipt and maintain a record of that receipt. In addition, the phrase ''by other means'' is removed to preclude the use of telephone or in-person conversations as the sole means by which an institution may notify a student. Also, this section is revised to include notification to Federal Perkins Loan Program borrowers.

Comments Regarding Prior-Year Charges

Comments: Most of the commenters supported the proposal allowing an institution, under limited circumstances and with a student's permission, to use a student's current year title IV, HEA program funds to pay for minor prior year charges. A few of these commenters, mostly business officers, stated that the current prohibition on the payment of prior-year charges has created difficulties for many students and institutions, resulting in increased transaction costs. These commenters believed that the proposed change will allow for smoother processing of student accounts and expedite the registration process. One commenter, writing on behalf of a higher education association, suggested that a student be asked to approve a specific amount of funds that an institution could use to pay for prior-year charges when the institution obtains the student's permission. The commenter believed that this would protect the student's need to have sufficient current year funds to pay for living and other necessary expenses. Another commenter suggested that after this provision is tested, some room for refinement may become evident, such as whether it is necessary to actually credit funds for current year charges before identifying that funds will be left over to pay prior year balances. Still another commenter questioned the role and authority of an aid officer in determining whether the payment of ''minor prior-year charges'' would hamper a student's ability to satisfy current year obligations, particularly when the aid officer and the student are not in agreement as to the amount of funds needed for current obligations.

While the majority of commenters appreciated that the Secretary did not specify a dollar amount for minor prior-year charges, a few commenters lamented this lack of specificity. One of these commenters argued that the small dollar amount involved in most cases where this provision would apply does not warrant the administrative burden associated with obtaining a student's permission. Instead, the commenter suggested that the Secretary define minor prior-year charges as falling between $250 to $500 and not require written permission from the student.

Two commenters argued that the cost and burden imposed by this proposal on students and institutions is unwarranted since any outstanding balance must be paid before a student is allowed to enroll or continue at an institution. These commenters suggested that the Secretary either simplify the process under which prior-year charges may be paid or, notwithstanding the concerns expressed by the Secretary in the NPRM, allow these charges to be paid without restriction.

One commenter writing on behalf of a student legal services organization contended that schools should not be allowed to control student credit

balances (particularly if those balances contain loan proceeds) in this manner even with the student's permission. The commenter's contention was based on the following reasons.

The commenter's first reason was based on the Secretary's failure to specify a dollar amount of prior-year charges. As a result, the commenter believed that fly-by-night schools, whose motivation is to maximize profits rather than maintain credibility with the Department, would take advantage of this provision. The commenter indicated that while a university might define a ''minor charge'' as up to $10 in library fines, a high-cost trade school could define it as several hundred dollars of overpriced vocational equipment. The commenter warned that the Secretary will be left to assess the reasonableness of school practices in program reviews, *i.e.*, after the fact and after the student's loan proceeds have been used.

The commenter's second reason was that prior-year charges may have been unpaid because they were contested by the student. The commenter saw no valid reason to allow the school to determine the validity of the charges and then use loan proceeds to cover them. The commenter asserted that the fact that the borrower has to give permission for these sorts of charges provides little comfort since the authorization will probably be a generic, blanket authorization given at the beginning of the term with a sheaf of other forms before specific charges are ever incurred.

Further, the commenter noted that in order to accommodate this change in the regulation, § 668.165(b)(1) has also been amended to delete the current generic bar on applying title IV, HEA program funds ''to any charges assessed the student in a prior award year or period of enrollment.'' Thus, it appeared to the commenter that the proposed rules open the door to using current year funds to pay for prior year tuition, room, board, or other miscellaneous charges. For these reasons, the commenter urged the Secretary to leave the regulation as currently written.

Discussion: The Secretary offers the following guidance with respect to the comments dealing with student authorizations. An authorization must contain an explanation of the provisions regarding the activities that an institution seeks to perform on behalf of a student. This does not mean that the authorization must detail every aspect pertaining to an activity. On the other hand, the Secretary does not consider acceptable a blanket authorization which only identifies the activities to be performed.

Regarding the comment that an institution must first credit a student's account with title IV, HEA program funds before the institution may use any balance that remains to pay for prior-year charges, the Secretary notes that while this is technically correct, it has broader implications. The proposed language ''provided that a student has or will have a title IV, HEA program credit balance'' was intended to extend the benefits of this provision to institutions that draw down funds after a student starts classes. These institutions would have the assurance that agreed-to prior-year charges will be paid.

The Secretary has carefully considered the arguments made by student legal services asking the Secretary to retract the proposed prior-year charges provisions. The Secretary acknowledges that while it may be possible for an unscrupulous school to benefit from an abuse of these provisions, the Secretary notes that prior-year balances occur mainly at established two- and four-year schools—such schools can not be characterized as ''fly-by-night.''

In response to comment that the current prohibition on the payment of prior-year charges has now created problems for students and institutions, the Secretary reminds institutions that title IV, HEA program funds have never been permitted to be used to pay prior-year charges. However, it appears from these comments, and from comments previously received on the cash management regulations, that some institutions were either unaware of or ignored this prohibition. The Secretary does not wish to admonish institutions that otherwise administer the title IV, HEA programs properly, but believes that had these institutions structured student billing and accounting systems that identified and prevented the payment of prior-year charges with current year funds, they would not now be experiencing difficulties brought about by the policy change allowing for the payment of these charges under limited circumstances.

Moreover, the Secretary cannot in these regulations make the changes that would be necessary to allow institutions to use a student's funds without restriction. To do so would require changes in the statutory provisions that limit, without permission, the use of a student's title IV, HEA program funds to specified allowable charges and in the Secretary's longstanding interpretation of the precepts underlying need analysis and award determinations. The proposal to allow for the payment of prior-year charges under limited circumstances is consistent with current law and, as a policy matter, was formulated merely as an administrative convenience to students and institutions in recognition of a problem that the Secretary believes should not occur with regularity or involve large sums of money. The Secretary did not intend to take sides in disputes between students and institutions regarding the legitimacy of prior-year charges. In putting forth this proposal, the Secretary was mindful of the need to protect student rights while at the same time meeting the administrative needs of institutions.

To this end, the Secretary will keep the general prohibition against using a student's current year title IV, HEA program funds to pay for prior-year charges. The Secretary will allow for payment of minor prior-year charges as proposed, but with one modification. The modification addresses the comments regarding whether a student may authorize in advance a specific amount of funds to pay for prior-year charges and whether the Secretary will establish a dollar amount for these charges. The Secretary believes that it would be difficult to determine in advance what the specific amount should be, and whether the payment of that amount in a future period would create financial problems for a student. Such a determination should be made in view of the student's circumstances when the situation arises. However, an institution may consider prior-year charges that do not exceed $100 to be minor without making this determination and may obtain a student's authorization in advance to pay for these charges should they occur.

Changes: Section 668.165(b)(1) is revised to reinstate the general prohibition that a student's current year title IV, HEA program funds may not be used to pay for prior-year charges. This section is also amended by removing proposed paragraph (b)(3)(iv)(C) and adding a new paragraph (e) that provides that an institution may use a student's current year funds to pay for minor prior-year charges if the student's current year institutional charges are satisfied and the institution obtains the student's permission. In addition, an institution may consider prior-year charges that do not exceed $100 to be minor. To pay prior-year charges for amounts over $100, an institution must determine if that payment would prevent the student from paying for his or her educational expenses.

Campus-Based Programs

Sections 674.2, 675.2, and 676.2 Definitions

Comments: Two commenters expressed their support for the proposal to delete the duplicative definitions of the terms ''full-time graduate or professional student'' and ''full-time undergraduate student'' from § 674.2(b) and § 675.2(b) and the term ''full-time undergraduate student'' from § 676.2(b). One commenter felt clarification was needed in the ''full-time student'' definition in § 668.2 of the Student Assistance General Provisions regulations to distinguish a full-time course load for undergraduate students from that of graduate/professional students.

Discussion: The Secretary believes that the definition of ''full-time student'' in the Student Assistance General Provisions regulations adequately addresses the determination of a full-time course load for both undergraduates and graduate/professional students. As stated in § 668.2, in the definition of a ''full-time student,'' ''* * * academic workload (other than by correspondence) as determined by the institution under a standard applicable to all students enrolled in a particular educational program. The student's workload may include any combination of courses, work, research, or special studies that the institution considers sufficient to classify the student as a full-time student.'' This part of the definition provides the institution with the discretion to determine a full-time course load for all classifications of students. The definition then proceeds to provide *minimum* standards for an undergraduate student.

Changes: None.

Sections 674.17, 675.17, and 676.17 Federal Interest in Allocated Funds

Comments: Several commenters supported the proposal to delete the provisions in § 674.17(a), § 675.17, and 676.17 that provide that Federal Perkins Loan, FWS, and FSEOG program funds are to be held in trust for the intended students and the Secretary and cannot be used or hypothecated for any other purpose. The commenters agreed that the elimination of these sections reduces redundancy since this provision is contained in the Student Assistance General Provisions regulations, § 668.161(b).

One commenter, while agreeing that regulations should not be repetitive, pointed out that § 668.161(b) of the General Provisions regulations only excepts funds used for administrative expenses, whereas § 675.17 of the FWS Program regulations, includes other allowable uses besides awards to students, such as use of funds for establishment of a Job Location and Development (JLD) Program.

The commenter also observed that under the Federal Perkins Loan Program regulations certain collection costs may also be charged to the fund; these charges are outside of the administrative expense allowance. The commenter further indicated that § 674.17(a) also reinforces the requirement that funds received by the institution includes repayments on loans. The commenter suggested clarifying § 668.161(b) to include other uses of campus-based funds.

Discussion: Federal Perkins Loan Program. The Secretary does not agree with the comment that § 668.161(b) needs clarification if § 674.17(a) is deleted. Section § 668.161(b) provides for uses of title IV, HEA allocated funds. Once loans are made and students begin making repayments, the repayments on these loans become part of the Federal Perkins Loan Program Fund (Fund). Also the charges for certain costs incurred in collecting a loan, when not paid by the borrower, are to be made against the Fund. Uses of the Fund are provided for in other sections of the Federal Perkins Loan Program regulations.

Federal Work-Study Program. The Secretary agrees with the commenter that § 668.161(b) excepts only funds used for administrative expenses, whereas § 675.17 allows funds allocated under the FWS Program to also be used for establishment of a Job Location and Development Program; and that if § 675.17 is deleted, § 668.161(b) needs clarification.

Changes: The Secretary is amending the language of this provision in § 668.161(b) to incorporate the uses of allocated FWS funds for certain activities under the Job Location and Development Program.

Sections 674.19, 675.19 and 676.19 Fiscal Procedures and Records

Comment: Several commenters commended the Secretary for the proposal to allow institutions the additional flexibility of using optical disk technology in complying with recordkeeping requirements. The commenters viewed this as additional proof of the Department's goal to simplify and modernize the regulations, and they commended the Secretary on his recognition of the importance of paper reduction. One of these commenters stated that this change will greatly enhance their ability to comply with the regulations to maintain records while utilizing their personnel and physical spaces more efficiently.

One commenter, while recognizing the benefit to schools in reducing the paper they have to retain, expressed concern of the danger for borrowers and the Department in having records that are more difficult to read or use as proof in legal cases. This commenter pointed out the fact that forgeries and alterations are not likely to be discernible under these alternative formats. The commenter recommended against allowing alternative forms of record retention for key Federal Perkins loan documents, such as promissory notes.

Discussion: The Secretary appreciates the commenters' support for new technology for the maintenance of records. However, the Secretary recognizes that he needs to allow for future technologies that provide an actual image of the original document. In response to the one commenter who was concerned about alternative forms of record retention, it has never been the Secretary's intention to allow alternative means of recordkeeping for key documents. Section 674.19(e)(4)(i) of the Federal Perkins Loan Program regulations provides that institutions must keep the *original* promissory notes and repayment schedules in a locked, fireproof container. These provisions remain and are not affected by the addition of the use of optical disk technology for maintaining other records.

Changes: The Secretary is amending this provision to provide for additional optical imaging technology.

Federal Perkins Loan Program

Section 674.2 Definitions

Comments: The commenters supported the Secretary's proposal to redefine the term ''making of a loan.'' However, several commenters requested that the Secretary clarify when a Federal Perkins loan is made, because the date on which the student signs the promissory note and the date on which the funds are disbursed may differ.

Discussion: In response to the commenters' clarification requests, under the provisions of this regulation, the Secretary considers that a Federal Perkins loan has been ''made'' when two events have occurred: the borrower has signed the Federal Perkins loan promissory note *and* the institution makes the first disbursement of loan funds to the borrower under that note. This new definition represents a significant departure from long-standing Federal Perkins Loan Program policy, because under the old policy, each

disbursement of a Federal Perkins loan to a borrower was considered a separate Federal Perkins loan.

Changes: The Secretary is modifying the definition of ''making of a loan'' to state that a Federal Perkins loan is ''made'' when the borrower has signed the promissory note and the first disbursement of loan funds has occurred.

Section 674.16 Making and Disbursing Loans

Comments: Many commenters strongly supported the Secretary's proposal to eliminate the requirement that a student sign for each loan advance. Most commenters agreed that this was the single most important proposal to reduce burden in the administration of the Federal Perkins Loan Program. One commenter strongly objected to the elimination of the requirement that a student sign for each loan advance. This commenter stated that signing for each advance reinforced in the students' minds the amounts they borrowed. This commenter was also concerned that, without the borrower's signature authorizing each loan advance, the institution may not be able to obtain a judgment or assign the loan without incurring additional legal costs to prove that the student had actually borrowed the total amount owed on the loan.

Discussion: The Secretary appreciates the support the community has shown for this regulatory effort. The Secretary respects the commenter's concern for the integrity of the Federal Perkins Loan Program. However, the Secretary believes that the value of the borrower's signing for each advance is outweighed by the burden this requirement imposes on institutions and borrowers. On the other hand, under the regulations, an institution may choose to continue to require that the borrower sign for each advance. Moreover, the Secretary disagrees with the commenter that the failure to obtain a signature for each advance will preclude the institution from assigning the note or obtaining a judgment against the borrower.

The Secretary notes that § 668.165(b)(1) is being amended to require an institution to notify a student that a disbursement of Federal Perkins loan funds is being credited to the student's account.

Changes: None.

Section 674.31 Promissory Note

Comments: While many commenters supported the proposal to allow the Secretary's promissory note under the Federal Perkins Loan Program to be used as a sample note, thereby allowing institutions to add items to the note as long as the substance of the note remains unchanged, many also requested clarification of this provision. Commenters asked whether changing the ''substance'' of the note meant changing the format of the note. Several commenters asked the Secretary to define ''substance.'' Several commenters asked whether new items on the promissory note that imposed additional requirements, penalties, or benefits were acceptable to the Secretary, and if not, what was an acceptable additional item. One commenter recommended that the Secretary not make the proposed change. This commenter stated that other federal loan programs use a national note that requires no additions by the schools. This commenter felt strongly that the language and provisions used in the Federal Perkins Loan Program promissory notes should be consistent across the Program and urged the Secretary to maintain § 674.31 unchanged.

Discussion: The Secretary has reevaluated his proposal to amend § 674.31(a). The Secretary agrees with commenters that the proposed change allowing institutions to make nonsubstantive additions to the sample promissory notes is too vague. The Secretary believes that the addition of provisions to the promissory note that would impose additional requirements, penalties, or benefits constitutes a substantive change to the note.

The Secretary agrees with the commenter who recommended that the promissory note should remain a national note and with consistent provisions. The Secretary is, therefore, requiring institutions to use the promissory notes approved by the Secretary, rather than providing ''sample'' promissory notes. An institution may not change the text of the promissory note or rearrange the order of the text. An institution may make nonsubstantive changes, such as changing the size or style of the type or requiring a student to include his or her driver's license number.

Changes: The Secretary is changing § 674.31(a) to provide that institutions must use the promissory note provided by the Secretary and that institutions may only make changes to the notes provided that are nonsubstantive.

Section 674.33 Repayment

Comments: Commenters unanimously supported the Secretary's proposal to combine the last scheduled Federal Perkins loan payment with the next-to-last payment if the last payment is $25 or less, an increase from $15. One commenter suggested that institutions be allowed to combine the last scheduled payment with the next-to-last payment if the last payment is $50 or less.

Discussion: The Secretary's purpose in amending § 674.33 is to remove administrative burden and to improve an institution's success in collecting small loan balances. However, the Secretary does not wish to overly burden student borrowers. The Secretary believes that combining the last scheduled payment with the next-to-last payment if the last payment is $50 or less may place a financial strain on student borrowers, thereby compromising the borrower's ability to pay off his or her loan.

Changes: None.

Section 674.47 Costs Chargeable to the Fund

Section 674.47 (g)

Comments: Of all the Federal Perkins Loan Program proposals in the NPRM, the Secretary's proposals related to ceasing collection activity generated the most comments. Most of these commenters made suggestions on ways to amend this provision. One commenter felt that, rather than ceasing collection activity, this provision should be modified to permit the write-off of defaulted accounts with outstanding balances between $5 and $25 after sending a first overdue notice. The commenter further noted that the proposed rule would require institutions to maintain accounts which would continue to accrue interest and would age over the years. Thus, loans under $25 would eventually reach $25. At that point the institution would have to perform due diligence on that loan under subpart C. The commenter noted that as a result there is no net gain to the institution in terms of administrative costs.

A commenter applauded the Secretary's attempt to provide relief for institutions handling defaulted accounts with outstanding balances of less than $25, but the commenter felt the regulations should reflect a higher amount, *i.e.* $100 or less.

Discussion: The Secretary does not agree with the commenter's suggestion to write off defaulted accounts with outstanding balances between $5 and $25 because it is inappropriate to write off debts of that amount. These are borrowers who are in default on a Federal loan. The borrower owes these amounts and the failure to collect these funds affects the future level of the Fund. However, the Secretary agrees with other commenters' suggestions to

raise the level at which an institution can stop collection efforts on a loan.

The Secretary agrees with the commenters that it may not be cost effective for an institution to continue collection efforts on small loan balances. Therefore, the Secretary will allow an institution to cease collection activity on defaulted accounts with balances of between $25 and $200, if the institution carried out the subpart C due diligence requirements and the account has not had any activity for four years. The Secretary chose a $200 threshold because $200 is the level at which an institution must make an annual determination to litigate a defaulted account.

If an institution chooses this option, these accounts may be included in its cohort default rate, if applicable. The borrower will still be in default and ineligible for further title IV, HEA program funds.

The Secretary agrees with the commenter's point regarding an institution's election to cease collection efforts on an account under $25. Therefore, the institution will not have to exercise due diligence required under subpart C, even though interest will continue to accrue and may put the account over $25, if it documents that it ceased collection activity when the account was under $25. However, the institution would not be able to assign the account to the Secretary and the borrower will remain responsible for repaying the account, including accrued interest. In addition, the Secretary notes that these accounts will still be included in the institution's cohort default rate, if applicable, and the borrower is still in default and ineligible for title IV, HEA program funds.

Changes: The Secretary has modified paragraph (g)(1) to reflect the noted changes.

Comments: One commenter felt that there should be some way for an institution to use its own funds to pay off larger balance accounts with outstanding balances as high as $100. The commenter did not feel it was cost effective to continue to track small amounts as defaults.

Discussion: An institution may pay off loan balances of its borrowers. However, under section 462(h)(2)(D) of the HEA, any such loans will be considered in default for purposes of calculating the institution's cohort default rate.

Changes: None.

Comments: A few commenters wanted a further explanation from the Secretary regarding proposed § 674.47(g)(2). These commenters did not understand how a loan which is not closed or paid-in-full could reduce the assets of the Fund. One commenter felt that this proposal would not only be counter-intuitive, since loans in this category would remain as balances due, accruing interest and carrying penalties associated with default, but would also create a new area of administrative complexity for this new category of loans ''in limbo.'' These commenters indicated that this change would burden institutions with additional costs in order to maintain this category of ''due'' but ''non-asset'' loans.

Discussion: The Secretary agrees with the commenters' points and apologizes for any confusion this proposed provision might have caused. It was the Secretary's intent to reduce burden in the administration of the Federal Perkins Loan Program. It was not the Secretary's intent to burden institutions with additional costs and a new systems design. Because these accounts are still ''open,'' institutions must include the amounts of these accounts as assets of the Fund when they choose to cease collection activities of defaulted accounts. However, when an institution writes off an account, in accordance with paragraph (h) of this section, these accounts would not remain an asset of the Fund.

Changes: The Secretary is amending paragraph (g) to remove the provision that would require an account on which the institution has chosen to cease collection activity to no longer be considered as an asset of the Fund.

Section 674.47(h)

Comments: While most commenters appreciated the Secretary's proposal to allow institutions to write off loan accounts with balances of less than $1.00, all commenters were unanimously opposed to the proposed write-off amount. Commenters felt that $1.00 was too stringent, that it was not cost effective in terms of real administration and collection costs, and that it would not accomplish the proposal's intended purpose: to provide relief to institutions in the administration of the Federal Perkins Loan Program. Commenters encouraged the Secretary to consider a higher amount, with the commenters suggesting amounts ranging from $2 to $25. A few commenters stated that the majority of their accounts with small remaining balances were $5.00 or less, and that it would be clearly more effective and efficient to raise the amount to $5.00.

Discussion: The commenters have convinced the Secretary that the proposed $1 figure was too low. The Secretary has adopted the commenters' suggestions that the amount be raised to $5. Once these accounts have been written off, the account is considered as paid-in-full. The account will no longer be considered as an asset to the Fund, the account will not be counted in the institution's cohort default rate, if applicable, and the promissory note will be returned to the borrower marked as paid-in-full.

Changes: The Secretary is amending 674.47(h) to increase the write-off threshold to $5.00. The Secretary is also amending paragraph (h) to provide that an account that has been written off may not be considered as an asset to the Fund.

Federal Work-Study Programs

Appendix B—Model Off-Campus Agreement

Comments: Four commenters supported the Secretary's proposal to remove the model off-campus agreement from regulation and include the agreement in the Federal Student Financial Aid Handbook. They felt that the Handbook is a more appropriate document and that this will make the sample agreement more easily accessible by aid administrators. One of these commenters suggested that the Secretary also include a model community service agreement in the Handbook.

Discussion: The off-campus agreement in Appendix B is a suggested model for the development of a written agreement between an institution of higher education and a federal, state, or local public agency or private nonprofit organization which employs students participating in the FWS Program. As stated in the model, institutions and agencies or organizations may devise additional or substitute paragraphs that are consistent with the statute or regulations and add any pertinent information that orients the agreement towards community services. Therefore, one sample off-campus agreement will be provided in the *Federal Student Financial Aid Handbook* for use in the FWS Program.

Changes: None.

Federal Family Educational Loan Program, and Direct Loan Program

Sections 682.201 and 685.200 Eligible Borrowers

Comments: Many commenters supported the proposal in the FFEL and Direct Loan Programs to allow a student's stepparent to borrow under the PLUS and Federal Direct PLUS Programs.

One commenter suggested that a stepparent should remain eligible to borrow on behalf of a stepchild if the

natural or adoptive parent to whom the stepparent is married, dies. The commenter indicated that a situation may arise where, if the other natural parent is still alive, the student will not become an independent student. The commenter indicated that the student's relationship with the surviving stepparent may be more akin to a parental bond than is the student's relationship with the surviving parent.

Another commenter suggested that the language of the regulations be amended to provide that a stepparent would be eligible to borrow on behalf of a stepchild if the stepparent's income was not used to determine the expected family contribution (EFC) of the stepchild. The commenter indicated that a parent could marry after the Free Application for Federal Student Aid (FAFSA) had been filed. The commenter believed that the new stepparent should be eligible to borrow a PLUS loan on behalf of the student.

Discussion: The Secretary appreciates the mostly positive comments he received on his proposal to allow stepparents to borrow under the FFEL and Direct Loan PLUS programs. While the Secretary agrees that the situation suggested by the commenter could, on rare occasions happen, he points out that he would expect that, in most instances, the financial aid officer would use professional judgement and make the student independent, while perhaps assessing some amount of untaxed income to the student as a result of support received from the stepparent. In this instance the student would be considered eligible for additional unsubsidized loans to replace whatever PLUS proceeds are not available. For these reasons, the Secretary does not believe there is need to make additional changes to the eligibility criteria for stepparents to borrow under the title IV PLUS programs.

The Secretary acknowledges, as pointed out by the second commenter, that the proposed language could have been interpreted to exclude certain stepparents from participation in PLUS Loan Programs because their income and assets were not taken into account when determining the student's EFC. Such a condition could exist when the student did not complete a FAFSA or in the case cited by the commenter when the natural parent married after the FAFSA was filed. The Secretary will change the eligibility requirement under which a stepparent may borrow a PLUS loan to include the income and assets ''that would have been taken into account'' rather than ''are taken into account'' when determining the student's EFC.

Changes: Sections 682.201 and 685.200 are changed to allow a stepparent to borrow under the FFEL and Direct Loan PLUS programs ''if that spouse's income and assets would have been taken into account when calculating a dependent student's expected family contribution.''

Section 682.600 Agreement Between an Eligible School and the Secretary for Participation in the FFEL Programs

Comments: All commenters supported the proposal to eliminate the provisions of § 682.600 (a) through (c) and to include the provisions that deal with foreign schools (§ 682.600(d)) in a new § 682.611. One commenter requested clarification of the Secretary's intent to eliminate § 682.600.

Discussion: The Secretary noted in the preamble of the NPRM (60 FR 49118) that the provisions of § 682.600(a) through (c) are unnecessary because they duplicate existing provisions found in 34 CFR Part 600 (Institutional Eligibility Under the Higher Education Act of 1965, As Amended) and 34 CFR Part 668 (Student Assistance General Provisions). The Secretary also noted that the provisions included in § 682.600(d) that deal with foreign schools are needed and would be retained in a new section, § 682.211.

Changes: None.

Section 682.602 Schedule Requirements for Courses of Study by Correspondence

Comments: All commenters supported the proposal to eliminate the provisions contained in § 682.602.

Discussion: Commenters agreed with the Secretary that the provisions of § 682.602 are no longer needed since students enrolled in correspondence programs are not eligible to receive FFEL Program loans unless they are enrolled in a program that leads to an associate, bachelor, or graduate degree.

Changes: None.

Federal Pell Grant Program

Comments: Various commenters expressed support for the proposed changes to the Federal Pell Grant Program.

Discussion: The Secretary appreciates the commenters' support of efforts to eliminate duplicative provisions from the regulations.

Changes: None.

Executive Order 12866

These regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of the regulatory action.

The potential costs associated with the regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering the title IV, HEA programs effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in the preamble under the heading *Paperwork Reduction Act of 1995.*

In assessing the potential costs and benefits—both qualitative and quantitative—of these regulations, the Secretary has determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

The potential costs and benefits of these final regulations are discussed elsewhere in this preamble under the following heading: *Analysis of Comments and Changes.*

Regulatory Flexibility Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. Small entities affected by these regulations are small institutions of higher education.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education provisions Act, 20 U.S.C. 1232(b)(2)(A), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed rules and regulations. However, the Secretary amends § 668.163(a)(2) and (3) as a final rule to revise the procedure for presenting cash requests to the Department under the exemption from rulemaking requirements in 5 U.S.C. 553(b)(A) for rules of agency procedure.

Assessment of Educational Impact

In the NPRM published September 21, 1995, the Secretary requested comment on whether the proposed regulations in this document would require transmission of information that is being gathered by, or is available from, any other agency or authority of the United States.

Based on the response to the proposed rules on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by, or is available from, any other agency or authority of the United States.

List of Subjects

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs— education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 674

Loan programs—education, Student aid, Reporting and recordkeeping requirements.

34 CFR Part 675

Loan programs—education, Student aid, Reporting and recordkeeping requirements.

34 CFR Part 676

Loan programs—education, Student aid, Reporting and recordkeeping requirements.

34 CFR Part 682

Administrative practice and procedure, Colleges and universities, education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Part 685

Administrative practice and procedure, Colleges and universities, education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 690

Grant programs—education, Reporting and recordkeeping requirements, Student aid.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Consolidation Program; 84.032 Federal Stafford Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 Federal State Student Incentive Grant Program; 84.268 William D. Ford Federal Direct Loan Program; and 84.272 National Early Intervention Scholarship and Partnership Program.)

Dated: November 24, 1995.

Richard W. Riley,

Secretary of Education.

The Secretary amends parts 668, 674, 675, 676, 682, 685, and 690 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099c, and 1141, unless otherwise noted.

§ 668.2 [Amended]

2. In § 668.2, paragraph (b) is amended by revising paragraph (1) of the definition of ''Payment period'' and by adding a sentence to the end of the definition of ''Federal Perkins Loan Program'' to read as follows:

§ 668.2 General definitions.

* * * * *

Federal Perkins Loan Program: * * * Unless otherwise noted, as used in this part, the Federal Perkins Loan Program includes the National Direct Student Loan Program and the National Defense Student Loan Program.

* * * * *

Payment period: (1) With respect to the Federal Pell Grant Program, a payment period as defined in 34 CFR 690.3;

* * * * *

§ 668.7 [Removed and Reserved]

3. Section 668.7 is removed and reserved.

4. Section 668.19 is revised to read as follows:

§ 668.19 Financial aid transcript.

(a) (1) An institution shall determine whether a student who is applying for assistance under any title IV, HEA program has previously attended another eligible institution.

(2) Before a student who previously attended another eligible institution may receive any title IV, HEA program assistance the institution the student is, or will be, attending—

(i) Must request each eligible institution the student previously attended to provide to it a financial aid transcript; or

(ii) May use information it obtains from the National Student Loan Data System (NSLDS) to satisfy the requirements of paragraphs (a)(1) and (a)(2)(i) of this section, after the Secretary informs institutions through a Notice in the Federal Register that the NSLDS is available for this purpose, and information on how the NSLDS can be used.

(3) Except as provided in paragraph (b)(5) of this section, if an institution requests a financial aid transcript from any institution a student previously attended, until the institution receives each requested financial aid transcript; the institution—

(i) May withhold payment of Federal Pell Grant and campus-based funds to the student;

(ii) May disburse Federal Pell Grant and campus-based funds to the student for one payment period only;

(iii) May decline to certify the student's Federal Stafford Loan application or the parent's Federal PLUS application under the FFEL Program;

(iv) May decline to originate the student's Federal Direct Stafford Loan or the parent's Federal Direct PLUS under the Direct Loan Program;

(v) May not deliver Federal Stafford or disburse Federal Direct Stafford Loan proceeds to a student; and

(vi) May not deliver Federal PLUS or disburse Federal Direct PLUS proceeds to a parent or student.

(4) (i) An institution may not hold Federal Stafford or Federal PLUS loan proceeds under paragraph (b)(3) of this section for more than 45 days. If an institution does not receive all required financial aid transcripts for a student within 45 days of the receipt of such proceeds, the institution shall return the loan proceeds to the appropriate lender.

(ii) An institution that certifies a Federal Stafford or Federal PLUS loan application before receiving all required financial aid transcripts shall return to the lender the appropriate amount of any Federal Stafford or Federal PLUS proceeds if it receives a financial aid transcript indicating that the student is not eligible for all, or a part, of the loan proceeds.

(5) An institution may disburse title IV, HEA program funds to a student without receiving a financial aid transcript from an eligible institution the student previously attended if the institution the student previously attended—

(i) Has closed, and information concerning the student's receipt of title IV, HEA program assistance for attendance at that institution is not available;

(ii) Is not located in a State; or

(iii) Provides the disbursing institution with the written certification described in paragraph (b)(2)(ii) of this section.

(b) Upon request, each institution located in a State shall promptly

provide to the institution that requested a financial aid transcript—

(1) All information in its possession concerning whether the student in question attended institutions other than itself and the requesting institution; and

(2) (i) A financial aid transcript for that student, if the student received or benefitted from any title IV, HEA program assistance while attending the institution; or

(ii) A written certification that—

(A) The student did not receive or benefit from any title IV, HEA program assistance while attending the institution; or

(B) The transcript would cover only years for which the institution no longer has records and is no longer required to keep records under the applicable title IV, HEA program recordkeeping requirements.

(c) An institution must disclose on a financial aid transcript for a student—

(1) The student's name and social security number;

(2) To the extent the institution is aware, whether the student is in default on any title IV, HEA program loan;

(3) To the extent the institution is aware, whether the student owes an overpayment on any title IV, HEA program grant or Federal Perkins Loan;

(4) For the award year for which a financial aid transcript is requested, the student's Scheduled Federal Pell Grant and the amount of Pell Grant funds disbursed to the student;

(5) The aggregate amount of loans made to the student under each of the title IV, HEA loan programs for attendance at the institution;

(6) For the award year in which a financial aid transcript is requested, the total amount of Federal Perkins loan funds disbursed to the student;

(7) Whether the student owed an outstanding balance on July 1, 1987 on either a National Direct Student Loan made for attendance at the institution;

(8) Whether the student owed an outstanding balance on October 1, 1992 on either a Federal Perkins loan or a National Direct Student Loan made for attendance at the institution; and

(9) The amount of, and period of enrollment for, the most current loan made to the student under the FFEL, and Direct Loan programs for attendance at the institution.

(d) (1) A financial aid transcript must be signed by an official authorized by the institution to disclose information in connection with title IV, HEA programs.

(2) An institution must base the information it includes on financial aid transcripts on records it maintains under the title IV, HEA programs recordkeeping requirements.

(Approved by the Office of Management and Budget under control number 1840–0537)

(Authority: 20 U.S.C. 1091, 1094)

5. The heading for § 668.21 is revised to read as follows:

§ 668.21 Treatment of Federal Perkins Loan, FSEOG, and Federal Pell Grant program funds if the recipient withdraws, drops out, or is expelled before his or her first day of class.

6. Section 668.22 is amended by removing paragraph (h)(1)(i) and redesignating paragraphs (h)(1)(ii) through (xiii) as paragraphs (h)(1)(i) through (xii), respectively; and by revising paragraph (d)(1)(i) to read as follows:

§ 668.22 Institutional refunds and repayments.

* * * * *

(d) * * *

(1) * * *

(i) If a student withdraws, drops out, or is expelled from the institution before the first day of classes for the period of enrollment for which the student was charged, the institution must follow the provisions under § 668.21 for the treatment of Federal Perkins Loan, FSEOG, and Federal Pell Grant Program funds, the provisions under § 682.604(d)(3) or (4) for the treatment of FFEL Program funds, and the provisions under § 685.303(b)(3) for the treatment of Direct Loan Program funds, as appropriate;

* * * * *

7. Subpart C is revised to read as follows:

Subpart C—Student Eligibility

Sec.

Subpart C—Student Eligibility

§ 668.31 Scope.

This subpart contains rules by which a student establishes eligibility for assistance under the title IV, HEA programs. In order to qualify as an eligible student, a student must meet all applicable requirements in this subpart.

(Authority: 20 U.S.C. 1091)

§ 668.32 Student eligibility—general.

A student is eligible to receive title IV, HEA program assistance if the student—

(a)(1) (i) Is a regular student enrolled, or accepted for enrollment, in an eligible program at an eligible institution;

(ii) For purposes of the FFEL and Direct Loan programs, is enrolled for no longer than one twelve-month period in a course of study necessary for enrollment in an eligible program; or

(iii) For purposes of the Federal Perkins Loan, FWS, FFEL, and Direct Loan programs, is enrolled or accepted for enrollment as at least a half-time student at an eligible institution in a program necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State;

(2) For purposes of the FFEL and Direct Loan programs, is at least a half-time student;

(b) Is not enrolled in either an elementary or secondary school;

(c)(1) For purposes of the Federal Pell Grant, FSEOG, and SSIG programs, does not have a baccalaureate or first professional degree; and

(2)(i) For purposes of the Federal Perkins Loan, FFEL, and Direct Loan programs, is not incarcerated; and

(ii) For purposes of the Federal Pell Grant program, is not incarcerated in a Federal or State penal institution;

(d) Satisfies the citizenship and residency requirements contained in § 668.33 and subpart I of this part;

(e)(1) Has a high school diploma or its recognized equivalent;

(2) Has obtained within 12 months before the date the student initially receives title IV, HEA program assistance, a passing score specified by the Secretary on an independently administered test in accordance with subpart J of this part; or

(3) Is enrolled in an eligible institution that participates in a State ''process'' approved by the Secretary under subpart J of this part;

(f) Maintains satisfactory progress in his or her course of study according to the institution's published standards of satisfactory progress that satisfy the provisions of § 668.16(e), and, if applicable, the provisions of § 668.34;

(g) Except as provided in § 668.35—

(1) Is not in default, and certifies that he or she is not in default, on a loan made under any title IV, HEA loan program;

(2) Has not obtained loan amounts that exceed annual or aggregate loan limits made under any title IV, HEA loan program;

(3) Does not have property subject to a judgment lien for a debt owed to the United States; and

(4) Is not liable for a grant or Federal Perkins loan overpayment. A student

receives a grant or Federal Perkins loan overpayment if the student received grant or Federal Perkins loan payments that exceeded the amount he or she was eligible to receive; or if the student withdraws, that exceeded the amount he or she was entitled to receive for non-institutional charges;

(h) Files a Statement of Educational Purpose in accordance with the instructions of the Secretary, or in the case of a loan made under the FFEL Program, with the lender;

(i) Has a correct social security number as determined under § 668.36, except that this requirement does not apply to students who are residents of the Federated States of Micronesia, Republic of the Marshall Islands, or the Republic of Palau;

(j) Satisfies the Selective Service registration requirements contained in § 668.37, and, if applicable, satisfies the requirements of § 668.38 and § 668.39 involving enrollment in telecommunication and correspondence courses and a study abroad program, respectively; and

(k) Satisfies the program specific requirements contained in—

(1) 34 CFR 674.9 for the Federal Perkins Loan program;

(2) 34 CFR 675.9 for the FWS program;

(3) 34 CFR 676.9 for the FSEOG program;

(4) 34 CFR 682.201 for the FFEL programs;

(5) 34 CFR 685.200 for the Federal Direct Student Loan programs;

(6) 34 CFR 690.75 for the Federal Pell Grant program; and

(7) 34 CFR 692.40 for the SSIG program.

(Authority: 20 U.S.C. 1091, 28 U.S.C. 3201(e))

§ 668.33 Citizenship and residency requirements.

(a) Except as provided in paragraph (b) of this section, to be eligible to receive title IV, HEA program assistance, a student must—

(1) Be a citizen or national of the United States; or

(2) Provide evidence from the U.S. Immigration and Naturalization Service that he or she—

(i) Is a permanent resident of the United States; or

(ii) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident;

(b) (1) A citizen of the Federated States of Micronesia, Republic of the Marshall Islands, or the Republic of Palau is eligible to receive funds under the FWS, FSEOG, and Federal Pell Grant programs if the student attends an eligible institution in a State, or a public or nonprofit private eligible institution of higher education in those jurisdictions.

(2) A student who satisfies the requirements of paragraph (a) of this section is eligible to receive funds under the FWS, FSEOG, and Federal Pell Grant programs if the student attends a public or nonprofit private eligible institution of higher education in the Federated States of Micronesia, Republic of the Marshall Islands, or the Republic of Palau.

(c) (1) If a student asserts that he or she is a citizen of the United States on the Free Application for Federal Student Aid (FAFSA), the Secretary attempts to confirm that assertion under a data match with the Social Security Administration. If the Social Security Administration confirms the student's citizenship, the Secretary reports that confirmation to the institution and the student.

(2) If the Social Security Administration does not confirm the student's citizenship assertion under the data match with the Secretary, the student can establish U.S. citizenship by submitting documentary evidence of that status to the institution. Before denying title IV, HEA assistance to a student for failing to establish citizenship, an institution must give a student at least 30 days notice to produce evidence of U.S. citizenship.

(Authority: 20 U.S.C. 1091, 5 U.S.C. 552a)

§ 668.34 Satisfactory progress.

(a) If a student is enrolled in an program of study of more than two academic years, to be eligible to receive title IV, HEA program assistance after the second year, in addition to satisfying the requirements contained in § 668.32(f), the student must be making satisfactory under the provisions of paragraphs (b), (c) and (d) of this section.

(b) A student is making satisfactory progress if, at the end of the second year, the student has a grade point average of at least a ''C'' or its equivalent, or has academic standing consistent with the institution's requirements for graduation.

(c) An institution may find that a student is making satisfactory progress even though the student does not satisfy the requirements in paragraph (b) of this section, if the institution determines that the student's failure to meet those requirements is based upon—

(1) The death of a relative of the student;

(2) An injury or illness of the student; or

(3) Other special circumstances.

(d) If a student is not making satisfactory progress at the end of the second year, but at the end of a subsequent grading period comes into compliance with the institution's requirements for graduation, the institution may consider the student as making satisfactory progress beginning with the next grading period.

(e) At a minimum, an institution must review a student's academic progress at the end of each year.

(Authority: 20 U.S.C. 1091(d))

§ 668.35 Student debts under the HEA and to the U.S.

(a) A student who is in default on a loan made under a title IV, HEA loan program may nevertheless be eligible to receive title IV, HEA program assistance if the student—

(1) Repays the loan in full; or

(2) (i) Makes arrangements, that are satisfactory to the holder of the loan and in accordance with the individual title IV, HEA loan program regulations, to repay the loan balance; and

(ii) Makes at least six consecutive monthly payments under those arrangements.

(b) A student who is not in default on a loan made under a title IV, HEA loan program, but has inadvertently obtained loan funds under a title IV, HEA loan program in an amount that exceeds the annual or aggregate loan limits under that program, may nevertheless be eligible to receive title IV, HEA program assistance if the student—

(1) Repays in full the excess loan amount; or

(2) Makes arrangements, satisfactory to the holder of the loan, to repay that excess loan amount.

(c) A student who receives an overpayment under the Federal Perkins Loan Program, or under a title IV, HEA grant program may nevertheless be eligible to receive title IV, HEA program assistance if the student—

(1) Pays the overpayment in full; or

(2) Makes arrangements, satisfactory to the holder of the overpayment debt, to pay the overpayment.

(d) A student who has property subject to a judgement lien for a debt owed to the United States may nevertheless be eligible to receive title IV, HEA program assistance if the student-

(1) Pays the debt in full; or

(2) Makes arrangements, satisfactory to the United States, to pay the debt.

(e) (1) A student is not liable for a Federal Pell Grant overpayment received in an award year if the institution can eliminate that overpayment by adjusting subsequent

Federal Pell Grant payments in that same award year.

(2) A student is not liable for a FSEOG or SSIG overpayment or Federal Perkins loan overpayment received in an award year if the institution can eliminate that overpayment by adjusting subsequent title IV, HEA program (other than Federal Pell Grant) payments in that same award year.

(f) A student who otherwise is in default on a loan made under a title IV, HEA loan program, or who otherwise owes an overpayment on a title IV, HEA program grant or Federal Perkins loan, is not considered to be in default or owe an overpayment if the student—

(1) Obtains a judicial determination that the debt has been discharged or is dischargeable in bankruptcy; or

(2) Demonstrates to the satisfaction of the holder of the debt that—

(i) When the student filed the petition for bankruptcy relief, the loan, or demand for the payment of the overpayment, had been outstanding for the period required under 11 U.S.C. 523(a)(8)(A), exclusive of applicable suspensions of the repayment period for either debt of the kind defined in 34 CFR 682.402(m); and

(ii) The debt otherwise qualifies for discharge under applicable bankruptcy law.

(Authority: 20 U.S.C. 1091 and 11 U.S.C. 523 and 525)

§ 668.36 Social security number.

(a) (1) Except for residents of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, the Secretary attempts to confirm the social security number a student provides on the Free Application for Federal Student Aid (FAFSA) under a data match with the Social Security Administration. If the Social Security Administration confirms that number, the Secretary notifies the institution and the student of that confirmation.

(2) If the student's verified social security number is the same number as the one he or she provided on the FAFSA, and the institution has no reason to believe that the verified social security number is inaccurate, the institution may consider the number to be accurate.

(3) If the Social Security Administration does not verify the student's social security number on the FAFSA, or the institution has reason to believe that the verified social security number is inaccurate, the student can provide evidence to the institution, such as the student's social security card, indicating the accuracy of the student's social security number. An institution must give a student at least 30 days, or until the end of the award year, whichever is later, to produce that evidence.

(4) An institution may not deny, reduce, delay, or terminate a student's eligibility for assistance under the title IV, HEA programs because verification of that student's social security number is pending.

(b) (1) An institution may not disburse any title IV, HEA program funds to a student until the institution is satisfied that the student's reported social security number is accurate.

(2) The institution shall ensure that the Secretary is notified of the student's accurate social security number if the student demonstrates the accuracy of a social security number that is not the number the student included on the FAFSA.

(c) If the Secretary determines that the social security number provided to an institution by a student is incorrect, and that student has not provided evidence under paragraph (a)(3) of this section indicating the accuracy of the social security number, and a loan has been guaranteed for the student under the FFEL program, the institution shall notify and instruct the lender and guaranty agency making and guaranteeing the loan, respectively, to cease further disbursements of the loan, until the Secretary or the institution determines that the social security number provided by the student is correct, but the guaranty may not be voided or otherwise nullified before the date that the lender and the guaranty agency receive the notice.

(d) Nothing in this section permits the Secretary to take any compliance, disallowance, penalty or other regulatory action against—

(1) Any institution of higher education with respect to any error in a social security number, unless the error was the result of fraud on the part of the institution; or

(2) Any student with respect to any error in a social security number, unless the error was the result of fraud on the part of the student.

(Authority: 20 U.S.C. 1091)

§ 668.37 Selective Service registration.

(a) (1) To be eligible to receive title IV, HEA program funds, a male student who is subject to registration with the Selective Service must register with the Selective Service.

(2) A male student does not have to register with the Selective Service if the student—

(i) Is below the age of 18, or was born before January 1, 1960;

(ii) Is enrolled in an officer procurement program the curriculum of which has been approved by the Secretary of Defense at the following institutions:

(A) The Citadel, Charleston, South Carolina;

(B) North Georgia College, Dahlonega, Georgia;

(C) Norwich University, Northfield, Vermont; or

(D) Virginia Military Institute, Lexington, Virginia; or

(iii) Is a commissioned officer of the Public Health Service and/or a member of the Reserve of the Public Health Service who is on active duty as provided in section 6(a)(2) of the Military Selective Service Act.

(b) (1) When the Secretary processes a male student's FAFSA, the Secretary determines whether the student is registered with the Selective Service under a data match with the Selective Service.

(2) Under the data match, Selective Service reports to the Secretary whether its records indicate that the student is registered, and the Secretary reports the results of the data match to the student and the institution the student is attending.

(c) (1) If the Selective Service does not confirm through the data match, that the student is registered, the student can establish that he—

(i) Is registered;

(ii) Is not, or was not required to be, registered;

(iii) Has registered since the submission of the FAFSA; or

(iv) Meets the conditions of paragraph (d) of this section.

(2) An institution must give a student at least 30 days, or until the end of the award year, whichever is later, to provide evidence to establish the condition described in paragraph (c)(1) of this section.

(d) An institution may determine that a student, who was required to, but did not register with the Selective Service, is not ineligible to receive title IV, HEA assistance for that reason, if the student can demonstrate by submitting clear and unambiguous evidence to the institution that—

(1) He was unable to present himself for registration for reasons beyond his control such as hospitalization, incarceration, or institutionalization; or

(2) He is over 26 and when he was between 18 and 26 and required to register—

(i) He did not knowingly and willfully fail to register with the Selective Service; or

(ii) He served as a member of one of the U.S. Armed Forces on active duty

and received a DD Form 214, ''Certificate of Release or Discharge from Active Duty,'' showing military service with other than the reserve forces and National Guard.

(e) For purposes of paragraph (d)(2)(i) of this section, an institution may consider that a student did not knowingly and willfully fail to register with the Selective Service only if—

(1) The student submits to the institution an advisory opinion from the Selective Service System that does not dispute the student's claim that he did not knowingly and willfully fail to register; and

(2) The institution does not have uncontroverted evidence that the student knowingly and willfully failed to register.

(f) (1) A student who is required to register with the Selective Service and has been denied title IV, HEA program assistance because he has not proven to the institution that he has registered with Selective Service may seek a hearing from the Secretary by filing a request in writing with the Secretary. The student must submit with that request—

(i) A statement that he is in compliance with registration requirements;

(ii) A concise statement of the reasons why he has not been able to prove that he is in compliance with those requirements; and

(iii) Copies of all material that he has already supplied to the institution to verify his compliance.

(2) The Secretary provides an opportunity for a hearing to a student who—

(i) Asserts that he is in compliance with registration requirements; and

(ii) Files a written request for a hearing in accordance with paragraph (f)(1) of this section within the award year for which he was denied title IV, HEA program assistance or within 30 days following the end of the payment period, whichever is later.

(3) An official designated by the Secretary shall conduct any hearing held under paragraph (f)(2) of this section. The sole purpose of this hearing is the determination of compliance with registration requirements. At this hearing, the student retains the burden of proving compliance, by credible evidence, with the requirements of the Military Selective Service Act. The designated official shall not consider challenges based on constitutional or other grounds to the requirements that a student state and verify, if required, compliance with registration requirements, or to those registration requirements themselves.

(g) Any determination of compliance made under this section is final unless reopened by the Secretary and revised on the basis of additional evidence.

(h) Any determination of compliance made under this section is binding only for purposes of determining eligibility for title IV, HEA program assistance.

(Authority: 20 U.S.C. 1091 and 50 App. 462)

§ 668.38 Enrollment in telecommunications and correspondence courses.

(a) If a student is enrolled in correspondence courses, the student is eligible to receive title IV, HEA program assistance only if the correspondence courses are part of a program that leads to an associate, bachelor's, or graduate degree.

(b) (1) For purposes of this provision, the Secretary considers that a student enrolled in a ''telecommunications course'' is enrolled in a correspondence course unless the total number of telecommunication and correspondence courses the institution provides is fewer than 50 percent of the courses the institution provides during an award year and the student is enrolled in a program that leads to an associate, bachelor's, or graduate degree.

(2) In making the determination required under paragraph (b)(1) of this section, the institution shall use its latest complete award year, and shall calculate the number of courses using the provisions contained in 34 CFR 600.7(b)(2).

(Authority: 20 U.S.C. 1091)

§ 668.39 Study abroad programs.

A student enrolled in a program of study abroad is eligible to receive title IV, HEA program assistance if—

(a) The student remains enrolled as a regular student in an eligible program at an eligible institution during his or her program of study abroad; and

(b) The eligible institution approves the program of study abroad for academic credit. However, the study abroad program need not be required as part of the student's eligible degree program.

(Authority: 20 U.S.C. 1091(o))

8. Section 668.133 is amended by revising paragraph (b) to read as follows:

§ 668.133 Conditions under which an institution shall request documentation and request secondary confirmation.

* * * * *

(b) *Exclusions from secondary confirmation.* (1) An institution may not require the student to produce the documentation requested under § 668.33(a)(2) and may not request that INS perform secondary confirmation, if the student—

(i) Demonstrates eligibility under the provisions of § 668.33 (a)(1) or (b); or

(ii) Demonstrated eligibility under the provisions of § 668.33(a)(2) in a previous award year as a result of secondary confirmation and the documents used to establish that eligibility have not expired; and

(iii) The institution does not have conflicting documentation or reason to believe that the student's claim of citizenship or immigration status is incorrect.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0650)

9. Section 668.161 is amended by revising paragraph (b) to read as follows:

§ 668.161 Scope and purpose.

* * * * *

(b) *Federal interest in title IV, HEA program funds.* Except for funds received by an institution for administrative expenses and for funds used for the Job Location and Development Program, under the Federal Work-Study Programs, funds received by an institution under the title IV, HEA programs are held in trust for the intended student beneficiaries and the Secretary. The institution, as a trustee of Federal funds, may not use or hypothecate (i.e., use as collateral) title IV, HEA program funds for any other purpose.

(Authority: 20 U.S.C. 1094)

* * * * *

10. Section 668.163 is amended by adding a new paragraph (a)(2)(iii); and by revising paragraph (a)(3)(i)(A) to read as follows:

§ 668.163 Requesting funds.

* * * * *

(a) * * *

(2) * * *

(iii) In submitting a request for cash, an institution must identify the title IV, HEA program under which the institution requests funds by its appropriate Catalog of Federal Domestic Assistance (CFDA) number and the total amount of program funds for each CFDA number included in the request.

* * * * *

(3) * * *

(i) * * *

(A) Identify the students for whom the institution is seeking reimbursement that will be included in the institution's request for cash. The institution's request for cash must identify the title IV, HEA program under which the institution seeks reimbursement by its appropriate CFDA number and the total

amount of program funds for each CFDA number included in the request;

* * * * *

11. Section 668.164, paragraph (a)(2)(iii) is revised to read as follows:

§ 668.164 Maintaining funds.

* * * * *

(a) * * *

(2) * * *

(iii) Except for public institutions, file with the appropriate State or municipal government entity a UCC–1 statement disclosing that the account contains Federal funds and maintain a copy of that statement in its records.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0697)

12. Section 668.165 is amended by revising paragraph (b)(1); and by adding a new paragraph (e) to read as follows:

§ 668.165 Disbursing funds.

* * * * *

(b) *Crediting a student's account at the institution* (1) *General.* An institution may disburse title IV, HEA program funds by crediting the student's account at the institution. Except as provided in paragraph (e) of this section, in crediting the student's account with title IV, HEA program funds, the institution may use those funds only to satisfy allowable charges described under paragraph (b)(3) of this section for the current award year or period of enrollment. An institution must notify expeditiously a student or parent borrower in writing or by equivalent electronic means that the institution has credited the student's account with Direct Loan, FFEL, or Federal Perkins Loan program funds. If an institution notifies a student or parent electronically, it must request the student or parent to confirm the receipt of the notice and maintain a record of that confirmation.

* * * * *

(e) *Prior-year charges.* An institution may use a student's title IV, HEA program funds to pay minor prior-year institutional charges if—

(1) The student has, or will have, a title IV, HEA credit balance as determined under paragraph (b)(2) of this section;

(2) The institution obtains the student's authorization to pay these charges; and

(3) The prior-year charges do not exceed $100; or

(4) The payment of these charges does not, or will not, prevent the student from paying his or her current-year education costs.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0697)

PART 674—FEDERAL PERKINS LOAN PROGRAM

13. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa–1087ii and 20 U.S.C. 421–429, unless otherwise noted.

§ 674.2 [Amended]

14. Section 674.2 paragraph (a) is amended by adding, in alphabetical order, ''Full-time student''.

15. Section 674.2 paragraph (b) is amended by removing the definitions of ''Full-time graduate or professional student'', ''Full-time undergraduate student'', and ''Satisfactory arrangements to repay the loan'' and by revising the definition of ''making of a loan'' to read as follows:

§ 674.2 Definitions.

* * * * *

(b) * * *

Making of a loan: When the borrower signs the promissory note for the award year and the institution makes the first disbursement of loan funds under that promissory note for that award year.

* * * * *

16. Section 674.5 is amended by redesignating paragraph (e) as paragraph (f), by adding new paragraph (e), and by revising redesignated paragraph (f) to read as follows:

§ 674.5 Federal Perkins loan program cohort default rate and penalties.

* * * * *

(e) *Satisfactory arrangements to repay the loan.* The Secretary considers that the borrower has made satisfactory arrangements to repay the loan when the borrower has—

(1) Paid the loan in full; or

(2) Executed a new written repayment agreement; and

(3) Made one payment each month for six consecutive months.

(f) *Loan rehabilitation.* (1) The Secretary considers that the borrower has rehabilitated the loan when the borrower has—

(i) Paid the loan in full; or

(ii) Executed a new written repayment agreement; and

(iii) Made one payment each month for 12 consecutive months.

(2) Within 30 days of the date of the rehabilitation, the institution shall report the rehabilitation to any national credit bureau.

17. Section 674.16 is amended by revising paragraph (d) to read as follows:

§ 674.16 Making and disbursing loans.

* * * * *

(d)(1) The institution shall disburse funds to a student or the student's account in accordance with 34 CFR 668.165.

(2) The institution shall obtain the borrower's signature on a promissory note for each award year before it disburses any loan funds to the borrower under that note for that award year.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0535)

§ 674.17 [Amended]

18. Section 674.17 is amended by removing paragraph (a) and by redesignating paragraphs (b)(1) introductory text, (b)(1)(i), (b)(1)(ii), (b)(1)(iii), (b)(2), (b)(3), (b)(4) introductory text, (b)(4)(i), (b)(4)(ii), and (b)(5) as paragraphs (a) introductory text, (a)(1), (a)(2), (a)(3), (b), (c), (d) introductory text, (d)(1), (d)(2), and (e), respectively.

19. Section 674.19 is amended by revising paragraph (e)(4)(v) to read as follows:

§ 674.19 Fiscal procedures and records.

* * * * *

(e) * * *

(4) * * *

(v) An institution may keep the records required in this section on microforms, optical disk, other comparable imaging technology, or in computer format. If an institution keeps its records in computer format, it shall maintain, in either hard copy, microforms, optical disk, or other comparable imaging technology, the source documents supporting the computer input.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0535)

20. Section 674.31 is amended by revising paragraph (a)(1) to read as follows:

§ 674.31 Promissory note.

(a) *Promissory note.* (1) An institution may use only the promissory note that the Secretary provides. The institution may make only nonsubstantive changes, such as changes to the type style or font, or the addition of items such as the borrower's driver's license number, to this note.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0535)

§ 674.33 [Amended]

21. Section 674.33 paragraph (a)(2) is amended by removing ''$15'' and adding in its place ''$25'', by redesignating the second paragraph

(d)(3) as paragraph (d)(6), by redesignating the second paragraph (d)(4) as paragraph (d)(7), and by removing ''(d)(2)(i)'' in redesignated paragraph (6) and adding in its place ''(d)(5)(i)''.

22. Section 674.34 paragraphs (e)(4) and (e)(6)(ii) are amended by changing the reference to ''(e)(8)'' to read ''(e)(9)''; the introductory text of paragraph (e)(6) is amended by adding ''or (e)(5)'' after ''(e)(4)''; paragraph (e)(7) is amended by removing ''or (4)'' and adding in its place ''(e)(4), or (e)(5)''; and by revising paragraph (e)(5) to read as follows:

§ 674.34 Deferment of repayment—Federal Perkins loans and Direct loans made on or after July 1, 1993.

* * * * *

(e) * * *

(5) Is working full-time and has a Federal education debt burden that equals or exceeds 20 percent of the borrower's total monthly gross income, and the borrower's income minus such burden is less than 220 percent of the amount calculated under paragraph (3) of this section.

* * * * *

23. Section 674.47 is amended by revising paragraph (g) and by adding a new paragraph (h) to read as follows:

§ 674.47 Costs chargeable to the fund.

* * * * *

(g) *Cessation of collection activity of defaulted accounts.* (1) An institution may cease collection activity on a defaulted account with a balance of less than $25, including outstanding principal, accrued interest, collection costs, and late charges, if the borrower has been billed for this balance in accordance with section 674.43(a).

(2) An institution may cease collection activity on a defaulted account with a balance of less than $200, including outstanding principal, accrued interest, collection costs, and late charges, if—

(i) The institution has carried out the due diligence procedures described in subpart C of the part with regard to this account; and

(ii) For a period of at least 4 years, the borrower has not made a payment on the account, converted the account to regular repayment status, or applied for a deferment, postponement, or cancellation on the account.

(h) *Write-offs of accounts of less than $5.* (1) Notwithstanding any other provision in this subpart, an institution may write off an account with a balance of less than $5, including outstanding principal, accrued interest, collection costs, and late charges.

(2) An institution that writes off an account under this paragraph may no longer include the amount of the account as an asset of the Fund.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0581)

PART 675—FEDERAL WORK-STUDY PROGRAMS

Subpart A—Federal Work-Study Program

24. The authority citation for part 675 continues to read as follows:

Authority: 42 U.S.C. 2571–2756b, unless otherwise noted.

§ 675.2 [Amended]

25. Section 675.2, paragraph (a) is amended by adding in alphabetical order, the term ''Full-time student''.

26. Section 675.2, paragraph (b) is amended by removing the definitions of ''Full-time graduate or professional student'' and ''Full-time undergraduate student''.

§ 675.17 [Removed and Reserved]

27. Section 675.17 is removed and reserved.

28. Section 675.19 is amended by revising paragraph (c)(3) to read as follows:

§ 675.19 Fiscal procedures and records.

* * * * *

(c) * * *

(3) An institution may keep the records required in this section on microforms, optical disk, other comparable imaging technology, or in computer format. If an institution keeps its records in computer format, it shall maintain, in either hard copy, microforms, optical disk, or other comparable imaging technology, the source documents supporting the computer input.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0535)

Appendix B to Part 675—[Removed]

29. Appendix B—Model Off-Campus Agreement is removed.

PART 676—FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

30. The authority citation for part 676 continues to read as follows:

Authority: 20 U.S.C. 1070b-1070–3, unless otherwise noted.

§ 676.2 [Amended]

31. Section 676.2, paragraph (a) is amended by adding in alphabetical order, the term ''Full-time student''.

32. Section 676.2, paragraph (b) is amended by removing the definition of ''Full-time undergraduate student''.

§ 676.17 [Removed and Reserved]

33. Section 676.17 is removed and reserved.

34. Section 676.19 is amended by revising paragraph (c)(3) to read as follows:

§ 676.19 Fiscal procedures and records.

* * * * *

(c) * * *

(3) An institution may keep the records required in this section on microforms, optical disk, other comparable imaging technology, or in computer format. If an institution keeps its records in computer format, it shall maintain, in either hard copy, microforms, optical disk, or other comparable imaging technology, the source documents supporting the computer input.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0535)

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

35. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

36. Section 682.201, paragraph (b) is amended by removing ''and'' at the end of paragraph (b)(6); redesignating paragraphs (b)(1) through (b)(6) as paragraphs (b)(1)(i) through (b)(1)(vi), respectively; by designating the undesignated introductory text following ''(b) *Parent borrower*.'' as the introductory text of paragraph (b)(1); by redesignating paragraphs (b)(7)(i) through (b)(7)(vi) as (b)(1)(vii)(A) through (b)(1)(vii)(F), respectively, and paragraphs (b)(7)(iii)(A) and (b)(7)(iii)(B) as (b)(1)(vii)(C)(*1*) and (b)(1)(vii)(C)(*2*), respectively; by redesignating paragraph (b)(8) as paragraph (b)(1)(viii) and removing the reference to ''(7)(iii)'' and adding, in its place ''(b)(1)(vii)(C)''; and by adding a new paragraph (b)(2) to read as follows:

§ 682.201 Eligible borrowers.

* * * * *

(b) * * *

(2) For purposes of paragraph (b)(1) of this section, a ''parent'' includes the individuals described in the definition of ''parent'' in 34 CFR 668.2 and the spouse of a parent who remarried, if that spouse's income and assets would have been taken into account when calculating a dependent student's expected family contribution.

§ 682.600 [Removed and Reserved]

37. Section 682.600 is removed and reserved.

§ 682.602 [Removed and Reserved]

38. Section 682.602 is removed and reserved.

39. A new § 682.611 is added to Subpart F to read as follows:

§ 682.611 Foreign schools.

A foreign school is required to comply with the provisions of this part, except to the extent that the Secretary states in this part or in other official publications or documents that those schools need not comply with those provisions.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1088, and 1094)

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

40. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. § 1078a *et seq.*, unless otherwise noted.

41. Section 685.200, paragraph (b) is amended by redesignating paragraphs (b)(1) through (b)(6) as paragraphs (b)(1)(i) through (b)(1)(vi), respectively; redesignating paragraph (b)(7) as (b)(1)(vii), paragraphs (b)(7)(i) through (b)(7)(iii) as (b)(1)(vii)(A) through (b)(1)(vii)(C), respectively, (b)(7)(i)(A) through (b)(7)(i)(C) as (b)(1)(vii)(A)(*1*) through (b)(1)(vii)(A)(*3*), respectively, and (b)(7)(ii)(A) and (b)(7)(ii)(B) as (b)(1)(vii)(B)(*1*) and (b)(1)(vii)(B)(*2*), respectively; by designating the undesignated introductory text following ''(b) *Parent borrower.*'' as the introductory text of paragraph (b)(1); by removing the references to ''(b)(7)(i)'' in redesignated paragraphs (b)(1)(vii)(B) and (b)(1)(vii)(C) and adding, in their place ''(b)(1)(vii)(A)''; and by adding a new paragraph (b)(2) to read as follows:

§ 685.200 Borrower eligibility.

* * * * *

(b) * * *

(2) For purposes of paragraph (b)(1) of this section, a ''parent'' includes the individuals described in the definition of ''parent'' in 34 CFR 668.2 and the spouse of a parent who remarried, if that spouse's income and assets would have been taken into account when calculating a dependent student's expected family contribution.

* * * * *

PART 690—FEDERAL PELL GRANT PROGRAM

42. The authority citation for part 690 continues to read as follows:

Authority: 20 U.S.C. § 1070a, unless otherwise noted.

43. Section 690.2 is amended by removing the definition of ''Payment Voucher'' and by adding, in alphabetical order, the definition of ''Payment Data'' to read as follows:

§ 690.2 Definitions.

* * * * *

(b) * * *

Payment Data: An electronic or magnetic record that is provided to the Secretary by an institution showing a student's expected family contribution, cost of attendance, enrollment status, and student disbursement information.

§ 690.7 [Amended]

44. Section 690.7, paragraph (a)(1) is removed and paragraph (a)(2) is redesignated as paragraph (a).

§ 690.71 [Amended]

45. Section 690.71 is amended by removing the second sentence.

§§ 690.72, 690.73, 690.74 [Removed and Reserved]

46. Sections 690.72, 690.73, and 690.74 are removed and reserved.

47. Section 690.83 is amended by revising paragraphs (a) through (d) to read as follows:

§ 690.83 Submission of reports.

(a) (1) An institution may receive either a payment from the Secretary for an award to a Federal Pell Grant recipient, or a corresponding reduction in the amount of Federal funds received in advance for which it is accountable, if—

(i) The institution submits to the Secretary the student's Payment Data for that award year in the manner and form prescribed in paragraph (a)(2) of this section by September 30 following the end of the award year in which the grant is made, or, if September 30 falls on a weekend, on the first weekday following September 30; and

(ii) The Secretary accepts the student's Payment Data.

(2) The Secretary accepts a student's Payment Data that is submitted in accordance with procedures established through publication in the Federal Register, and that contain information the Secretary considers to be accurate in light of other available information including that previously provided by the student and the institution.

(3) An institution that does not comply with the requirements of this paragraph may receive a payment or reduction in accountability only as provided in paragraph (d) of this section.

(b) (1) An institution shall report to the Secretary any change in enrollment status, cost of attendance, or other event or condition that causes a change in the amount of a Federal Pell Grant for which a student qualifies by submitting to the Secretary the student's Payment Data that discloses the basis and result of the change in award for each student. Through publication in the Federal Register, the Secretary divides the award year into periods and establishes the deadlines by which the institution shall report changes occurring during each period. The institution shall submit the student's Payment Data reporting a change to the Secretary by the end of that reporting period that next follows the reporting period in which the change occurred.

(2) An institution shall submit in accordance with deadline dates established by the Secretary, through publication in the Federal Register, other reports and information the Secretary requires in connection with the funds advanced to it and shall comply with the procedures the Secretary finds necessary to ensure that the reports are correct.

(3) An institution that timely submits, and has accepted by the Secretary, the Payment Data for a student in accordance with this section shall report a reduction in the amount of a Federal Pell Grant award that the student received when it determines that an overpayment has occurred, unless that overpayment is one for which the institution is not liable under § 690.79(a).

(c) In accordance with 34 CFR 668.84 the Secretary may impose a fine on the institution if the institution fails to comply with the requirements specified in paragraphs (a) or (b) of this section.

(d) (1) Notwithstanding paragraphs (a) or (b) of this section, if an institution demonstrates to the satisfaction of the Secretary that the institution has provided Federal Pell Grants in accordance with this part but has not received credit or payment for those grants, the institution may receive payment or a reduction in accountability for those grants in accordance with paragraphs (d)(4) and either (d)(2) or (d)(3) of this section.

(2) The institution must demonstrate that it qualifies for a credit or payment by means of a finding contained in an audit report of an award year that was the first audit of that award year and that was conducted after December 31, 1988 and timely submitted to the Secretary under 34 CFR 668.23(c).

(3) An institution that timely submits the Payment Data for a student in accordance with paragraph (a) of this section but does not timely submit to the Secretary, or have accepted by the Secretary, the Payment Data necessary

to document the full amount of the award to which the student is entitled, may receive a payment or reduction in accountability in the full amount of that award, if—

(i) A program review demonstrates to the satisfaction of the Secretary that the student was eligible to receive an amount greater than that reported in the student's Payment Data timely submitted to, and accepted by the Secretary; and

(ii) The institution seeks an adjustment to reflect an underpayment for that award that is at least $100.

(4) In determining whether the institution qualifies for a payment or reduction in accountability, the Secretary takes into account any liabilities of the institution arising from that audit or program review or any other source. The Secretary collects those liabilities by offset in accordance with 34 CFR part 30.

* * * * *

(Approved by the Office of Management and Budget under control number 1840–0688)

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